

SECOND AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

AND

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS

FOR

WESTGATE LOFTS CONDOMINIUMS

A MIXED USE CONDOMINIUM PROJECT

IN

SALT LAKE COUNTY, UTAH

WESTGATE LOFTS, INC.

A UTAH CORPORATION

AND

WEST SIDE PROPERTY ASSOCIATES, L.P.

A UTAH LIMITED PARTNERSHIP

AS DECLARANT

September, 2008

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**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WESTGATE LOFTS CONDOMINIUMS**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTGATE LOFTS CONDOMINIUMS (this "**Declaration**") is made effective by **Westgate Lofts, Inc.**, a Utah corporation ("**Declarant**") as of the date of recording of the first set of covenants, conditions, and restrictions for Westgate Lofts Condominiums at Book 9411, Page 1-83, as Entry Number 9977688, which date is January 19, 2007. Capitalized terms used herein are defined in Article 1 or the recitals below. The clarifications, changes, and new provisions set forth in this Declaration are made to facilitate the Supplemental Declarant Right to expand the Condominium Project and to correct errors or inconsistencies in the Declaration with regard to applicable law. **WEST SIDE PROPERTY ASSOCIATES, L.P.**, a Utah limited partnership ("**Westside**"), is executing this Declaration as a Declarant for the sole and limited purpose of subjecting the Additional Land, as defined in Section 3.12.3, to this Declaration.

**RECITALS**

- A. Declarant is the fee owner of that certain real property situated in Salt Lake City, Salt Lake County, Utah, described as Buildings 320, 328 and 342 West 200 South, as they now stand, with all easements and rights appurtenant thereto, Salt Lake City, Utah 84101, together with all of the land on which such buildings are located, more particularly described on EXHIBIT A, attached hereto and hereby incorporated by reference, together with all of the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto (the "**Property**").
- B. West Side Property Associates, L.P., a Utah limited partnership ("**West Side**") is the fee owner of that certain real property situated in Salt Lake City, Salt Lake County, Utah, described as Buildings 312 and 316 West 200 South, Salt Lake City, Utah 84101, as they now stand, with all easements and rights appurtenant thereto, together with all of the land on which such buildings are located and other land adjacent to the Property, more particularly described on EXHIBIT B, attached hereto and hereby incorporated by reference, together with all of the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto (the "**West Side Property**").
- C. Declarant has recorded subdivision plats for the Property and developed the Property as a condominium project pursuant to the Condominium Ownership Act codified at Chapter 8 of Title 57 of the Utah Code (the "**Act**"); Declarant has developed and conveyed the Property, together with all buildings and improvements constructed on the Property (including, without limitation, Buildings 320, 328 and 342 as they now stand), and all easements and rights appurtenant thereto, as a condominium project subject to the provisions of the Act, with such condominium project originally consisting of (i) Building 328 with three (3) Commercial Units on its 1<sup>st</sup> floor and fifty-three (53) Residential Units on its 1<sup>st</sup> through 6<sup>th</sup> floors, together with any and all related common areas and facilities pursuant to the Act, (ii) Building 342 that shall be deemed to be

convertible space, an expandable condominium, and a contractible condominium, (iii) Building 320 that shall be deemed to be convertible space, an expandable condominium, and a contractible condominium, and (iv) the remainder of the Property be deemed to be convertible land, an expandable condominium, and a contractible condominium (all collectively referred to herein as the "**Condominium Project**");

- D. Declarant has amended this Declaration to facilitate and provide for (i) the conversion of a commercial unit in Building 328 to a residential unit, such that Building 328 now has two (2) Commercial Units on the its 1<sup>st</sup> floor and fifty-four (54) Residential Units on its 1<sup>st</sup> through 6<sup>th</sup> floors, and (ii) the conversion of the convertible space in Building 342 to seventeen (17) Residential Units on its 1<sup>st</sup> and 2<sup>nd</sup> floors, together with any and all related common areas and facilities pursuant to the Act, with Building 320 still deemed to be convertible space, an expandable condominium, and a contractible condominium and the remainder of the Property still deemed to be convertible land, an expandable condominium, and a contractible condominium;
- E. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners or Occupants of the Condominium Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein (hereinafter collectively referred to as the "**Restrictions**") which shall run with and be a burden upon the Property; and
- F. Declarant intends that the Owners, Occupants, Lenders, and all other persons hereafter acquiring any right, title or interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property; and for establishing rules for the use, occupancy, management, and enjoyment thereof all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Condominium Project and the quality of life therein.

NOW, THEREFORE, Declarant, as owner of the Property for the purposes above set forth, declares as follows:

## **ARTICLE 1** **DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 "**Act**" shall mean the Condominium Ownership Act, codified at Sections 57-8-1 through 57-8-40, Utah Code Annotated, pertaining to the creation, ownership and management of a Condominium in the State of Utah.
- 1.2 "**Allocated Interest**" shall mean the undivided right, title and interest (the "**Interest**") (expressed as a fraction or percentage in this Declaration) in the Common Areas and Facilities, the Common Expense liability, and votes in the Association allocated to each Unit.



- 1.3 "**Articles**" shall mean the Articles of Incorporation by which the Association is formed under the nonprofit corporation law of the State of Utah.
- 1.4 "**Assessments**" shall mean the charges against Owners to defray the Common Expenses as well as miscellaneous Special Assessments, Special Assessments for capital improvements, and Special Assessments for the purpose of restoring and reconstructing the Condominium Project in the event of casualty, all as provided in this Declaration.
- 1.5 "**Association**" shall refer to WESTGATE LOFTS CONDOMINIUM ASSOCIATION, whose membership shall include each Owner of a Unit in the Condominium Project, as required by the Act. The Association will be incorporated as a Utah nonprofit corporation prior to the conveyance of the first Unit in the Condominium Project by Declarant.
- 1.6 "**Association Rules**" shall mean and refer to the rules and regulations adopted by the Association pursuant to this Declaration and in furtherance of the Bylaws and Section 57-8-8 of the Act.
- 1.7 "**Board**" shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association (also sometimes referred to herein as the "**Board of Directors**").
- 1.8 "**Bylaws**" shall mean the Bylaws adopted by the Association pursuant to Sections 57-8-15 and 57-8-16 of the Act for the purpose of regulating the affairs of the Association, attached as EXHIBIT C, and as the same may be amended from time to time.
- 1.9 "**Commercial Units**" shall mean (A) the two (2) commercial units on the 1<sup>st</sup> floor of Building 328 that shall be (i) used exclusively for commercial purposes in conformity with all laws and ordinances, (ii) shall comply with the terms and provisions of this Declaration, including, without limitation, Section 9.16 and (iii) allocated one (1) parking space per each Unit (whether exclusive or non-exclusive as determined in Declarant's sole discretion) and (B) any Commercial Units created from the Convertible Space, Convertible Land, or the expansion of the Condominium Project.
- 1.10 "**Common Areas and Facilities**" shall mean the entire Condominium Project (including all items listed in Section 57-8-3(4) of the Act, if applicable), excluding the Units.
- 1.11 "**Common Expenses**" shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Areas and Facilities which are maintained by the Association; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees of the Association and of Declarant for work done on the Property or for the benefit of the Association or the Owners of the Units; (d) utilities (other than separately metered utilities for the Units), trash pickup and disposal, extermination,

construction, and development of the Property, execution of the Bylaws, and all other acts required or rights reserved to the Declarant pursuant to this Declaration.

- 1.18 "**Declaration**" shall mean this SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTGATE LOFTS CONDOMINIUMS including all exhibits attached hereto, which are hereby incorporated by reference, and any and all amendments hereof and supplements hereto.
- 1.19 "**Lender**" shall mean a holder of a mortgage or deed of trust on a Unit, provided that the initial beneficiary of such mortgage or deed of trust is a person or entity engaged in the regular day to day business of loaning money for the purchase or refinance of residential real estate.
- 1.20 "**Limited Common Area and Facility**" means a portion of the Common Areas and Facilities specifically designated as a Limited Common Area and Facility in this Declaration, the Plat, or a subsequent plat and allocated by this Declaration, the Plat, or a subsequent plat for the exclusive use of one or more but fewer than all of the Units.
- 1.21 "**Occupant**" shall mean a Person or Persons, other than an Owner, in possession of, or using a Unit, including, without limitation, family members, tenants, guests, or invitees.
- 1.22 "**Owner**" shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the County Recorder of Salt Lake County, Utah; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. Declarant shall be considered the record Owner of any Unit prior to its initial conveyance by Declarant.
- 1.23 "**Person**" shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.
- 1.24 "**Plat**" means the record of survey map of the Property submitted with respect to this Condominium Project and showing thereon two (2) Commercial Units on the 1<sup>st</sup> floor and fifty-four (54) Residential Units only on floors 1, 2, 3, 4, 5, and 6, each of which units is identified by a Unit Number in Building 328 and seventeen (17) Residential Units on the 1<sup>st</sup> and 2<sup>nd</sup> floors of Building 342. The original Plat for the Property was recorded in Book 9410, Page 9843A-D, Entry No. 9977687 on January 19, 2007 in the records of the County Recorder of Salt Lake County, Utah and the Plat converting Building 342 is recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Entry No. \_\_\_\_\_ on \_\_\_\_\_, 2008. Copies of both Plats referenced herein is included as EXHIBIT E, attached hereto and hereby incorporated by reference. "Plat" shall also refer to any additional plat that may be recorded with any Supplemental Declaration.
- 1.25 "**Property**" shall have the meaning given in Recital Paragraph A above.

security, planting (of gardens, flowers, trees and shrubs), gardening and other related services; (e) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Board in its discretion; (f) the establishment of reasonable reserves as the Board shall deem appropriate in its discretion for the periodic maintenance, repair, and replacement of the Common Areas and Facilities, which shall in no event be less than two (2) months of the estimated Assessments for each Unit; and (g) other miscellaneous charges incurred by the Association or the Board pursuant to this Declaration, the Bylaws or Association Rules in furtherance of the purposes of the Association or in discharge of the duties and powers of the Association.

- 1.12 "**Comprehensive Maintenance Manual**" shall mean a manual prepared and provided by Declarant to the Association with certain information regarding the construction of the Condominium Project and minimum maintenance recommendations that the Association shall implement; provided, that the Association's maintenance responsibilities shall not be limited to the maintenance recommendations contained in the Comprehensive Maintenance Manual. Notwithstanding any other statement to the contrary, it is expressly understood that the Comprehensive Maintenance Manual contains only some of the minimum recommendations of the Declarant provided to the Association as a courtesy, that additional maintenance above that set forth in the Comprehensive Maintenance Manual may be required, that following the recommendations in the Comprehensive Maintenance Manual does not in any way constitute any kind of warranty or guaranty on the part of Declarant, and that the Association shall have no right of action of any kind against Declarant based on or arising from the Comprehensive Maintenance Manual in any way.
- 1.13 "**Condominium Project**" means this real estate condominium project located on the Property wherein fee simple title to single units in a multi-unit project, together with an undivided interest in the Common Areas and Facilities of the property, are owned separately.
- 1.14 "**Contractible Condominium**" shall have the meaning given in Section 57-8-3(11) of the Act.
- 1.15 "**Convertible Land**" shall have the meaning given in Section 57-8-3(12) of the Act and shall include all of the Property other than the existing Buildings 320, 328 and 342 as described on EXHIBIT D.
- 1.16 "**Convertible Space**" shall have the meaning given in Section 57-8-3(13) of the Act and shall include Building 320 located on the Property. The Convertible Space is identified as "Convertible Condominium Space" on the first page of the Plat, a copy of which is attached hereto as EXHIBIT E.
- 1.17 "**Declarant**" shall mean WESTGATE LOFTS, INC., a Utah corporation, and the successors and assigns of Declarant's rights hereunder for purposes of imposing covenants, conditions and restrictions on the Property and for purposes of improvement,

- 1.26 "**Residential Units**" shall mean (A) the fifty-four (54) Units on floors 1, 2, 3, 4, 5, and 6 of Building 328 and the seventeen (17) Units on floors 1 and 2 of Building 342 that shall be (i) used exclusively for residential purposes in conformity with all laws and ordinances and (ii) allocated one (1) parking space per unit (in locations and subject to change as determined by the Board in its sole discretion) and (B) any other Units created from the Convertible Space, Convertible Land, or the expansion of the Condominium Project unless such Units are designated as Commercial Units.
- 1.27 "**Restrictions**" shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.
- 1.28 "**Supplemental Declarant Rights**" shall mean the rights, titles and interests granted to Declarant in this Declaration to do, in Declarant's sole discretion, any of the following:
- (a) Construct any improvements provided for in this Declaration;
  - (b) Maintain sales offices, models, and signs advertising the Condominium Project;
  - (c) Use and/or record easements upon the Common Areas and Facilities for the purpose of making improvements or marketing units within the Property;
  - (d) Appoint or remove any Officer or Board Member of the Association prior to the Turnover Date;
  - (e) Designate certain Limited Common Areas and Facilities (including, without limitation, parking and storage units) for use by designated Unit owners until changed or modified by a supermajority vote of the Owners as set forth in this Declaration;
  - (f) Add additional land and Units to expand the Condominium Project as permitted under this Declaration and under the Act, and in conjunction therewith modify the percentage of undivided interest allocated to each Unit and thereby the percentage vote allocated to each Unit;
  - (g) Convert Convertible Land and/or Convertible Space into Common Areas and Facilities, Limited Common Areas and Facilities and Units as permitted under this Declaration and under the Act; and
  - (h) Withdraw contractible land from the Property,
- 1.29 "**Supplemental Declaration**" shall mean a written instrument recorded in the records of the County Recorder of Salt Lake County, Utah, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.
- 1.30 "**Turnover Date**" shall have the meaning set forth in Section 5.3.2 below.

- 1.31 "Unit" shall mean part of the Condominium Project, including one or more rooms situated in a building comprising part of the Condominium Project, designed or intended for independent ownership and occupancy as a Commercial Unit or Residential Unit, including without limitation the Convertible Space, Convertible Land, and Additional Land as required pursuant to the Act. The respective Allocated Interest in the Common Area and Facilities is appurtenant to the Unit.
- 1.32 "Unit Number" shall mean the number, symbol, or address that identifies one Unit in the Condominium Project.

**ARTICLE 2**  
**CREATION OF THE CONDOMINIUM PROJECT**

- 2.1 Submission. Declarant hereby submits and subjects the Property to be a Condominium Project pursuant to the Act, and in furtherance thereof, makes and declares the Restrictions contained in this Declaration, and Declarant hereby declares and agrees that the Condominium Project and all of the Units shall be held, conveyed, transferred, sold, leased, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of Declarant, the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns.
- 2.2 Name and Location. The Condominium Project shall be named and known as WESTGATE LOFTS CONDOMINIUMS. The Condominium Project is located in Salt Lake County, Utah, and the legal description of the real estate included in the Condominium Project is the Property set forth on EXHIBIT A. The name of the Association is WESTGATE LOFTS CONDOMINIUM ASSOCIATION.
- 2.3 Interpretation of Declaration and Applicability of the Act. Declarant intends that the Condominium Project shall be governed by the Act, except where (in compliance with the Act) Declarant has included specific provisions in this Declaration which legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Condominium Project.
- 2.4 Agent for Service of Process. Sean Monson, 3165 E. Millrock Dr., Suite 500, Salt Lake City, Utah 84121, shall be the person to receive service of process for the Condominium Project pursuant to Section 57-8-10(2)(d)(iii) of the Act, until such time as the Board shall duly appoint a new agent and file a supplement hereto.

**ARTICLE 3**  
**DESCRIPTION OF THE UNITS, LIMITED COMMON**  
**AREAS AND FACILITIES, COMMON AREAS AND FACILITIES,**  
**ALLOCATED INTERESTS, PLAT, AND CONVERTIBLE LAND AND SPACE**

- 3.1 Description of the Boundaries of Each Unit and Unit Number. The square footage and Unit Number of each of the Units within the Condominium Project are set forth on the Plat. The horizontal boundaries of each Unit shall be the underside of the finished but undecorated ceiling and the top of the finished but undecorated floor of the Unit as shown on the Plat. The vertical boundaries of each Unit shall be the interiors of the finished but undecorated walls located on the perimeter lines of the respective Units as shown on the Plat. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished surfaces are part of the Unit, and all other and structural portions of the walls, floors, columns, or ceilings are part of the Common Areas and Facilities. If any pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, or sewer lines, or any other similar fixtures lie partially or wholly within or outside the designated boundaries of a Unit, any portion serving only that Unit shall be deemed to be a Limited Common Area and Facility allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Area and Facilities is part of the Common Areas and Facilities. Subject to the preceding provision of this paragraph, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit. Conveyance of a Unit includes the use of the Limited Common Areas and Facilities appurtenant to said Unit.
- 3.2 Description of Common Areas and Facilities for Parking and Storage Areas. Subject to Declarant's right to provide temporary parking on the Temporary Parking Parcel described in Section 3.10, Declarant shall by no later than the Turnover Date designate the parking space(s) and storage area within the Common Areas to be used by the Owner of each Unit. Such designation cannot be changed without the express written consent of the Owner whose use of the designated parking space or storage unit will be affected except upon the affirmative vote of more than eighty percent (80%) of the Owners as determined by their respective percentages of ownership of the Units. Except as otherwise provided herein, no Owner shall be denied use of a parking space or storage space except in instances where, through no fault of the Association or its members, it is impractical to provide such use.
- 3.3 Description of Limited Common Areas and Facilities for Patios, Balconies and Entryways. The patio, balcony (or balconies), exterior screens and shutters and entryway, if any, which are adjacent to each respective Unit as set forth and depicted on the Plat shall be exclusive Limited Common Areas and Facilities for the Unit. These Limited Common Areas and Facilities shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

- 3.4 Description of Common Areas and Facilities. The Common Areas and Facilities shall consist of the entire Condominium Project, excluding the Units and any Limited Common Areas and Facilities appurtenant thereto.
- 3.5 United Interest of Each Unit In the Common Areas and Facilities. The designation of the Allocated Interest which each Unit has in the Common Areas and Facilities is a fractional interest where the numerator is the square footage of the Unit and the denominator is the sum of the square footage of all the Units in the Condominium Project.
- 3.6 Allocated Interest of Each Unit In the Votes of the Association. The designation of the Allocated Interest that each Unit has in the votes of the Association is a fraction where the numerator is the square footage of the Unit and the denominator is the sum of the square footage of all the Units in the Condominium Project.
- 3.7 Allocated Interest of Each Unit in the Common Expenses of Condominium Project. The designation of the Allocated Interest that each Unit bears in the Common Expenses of the Condominium Project is a fraction where the numerator is the square footage of the Unit and the denominator is the sum of the square footage of all the Units in the Condominium Project.
- 3.8 Current Statement of Allocated Interest. The Allocated Interest of each Unit for purposes of Section 3.5, Section 3.6 and Section 3.7 of the Declaration is set forth in EXHIBIT F, attached hereto and incorporated herein by reference.
- 3.9 Plat. The Plat is hereby incorporated into, and made an integral part of, this Declaration and all requirements and specifications set forth on the Plat and which are required by the Act are deemed included in this Declaration.
- 3.10 Property, Parking and Access Rights Reserved to the Declarant. Declarant reserves to itself, its successors and assigns, the property described in the Plat as the "Temporary Parking Parcel" and grants a temporary, non-exclusive license to itself, its successors, assigns, licensees, the Association, the Owners, its tenants and other permissive users for ingress to, use of and egress for up to thirty-four (34) parking stalls for Building 328 Units plus seventeen (17) parking stalls for Building 342 Units on the Temporary Parking Parcel designated on the Plat and as set forth in the attached EXHIBIT G. Use of this license shall begin upon the sale and occupancy of each Unit as needed to provide each Unit with one (1) parking stall upon occupancy. Upon the first use of the license associated with a Unit, the Association shall become responsible for a proportionate share of the costs and expenses associated with the care, maintenance and upkeep of the Temporary Parking Parcel based on the number of parking stalls allocated and available for use by the Association, the Owners and their licensees and invitees. A parking stall shall be deemed available for use by the Association and Owners from the date that the closing documents allow a Unit Owner to take occupancy of his or her purchased Unit. The Temporary Parking Parcel shall be used for up to but not to exceed six (6) years (as determined in Declarant's sole discretion except for the contingency described in the last sentence of this paragraph) from the first date of allowed occupancy of a Unit that must use a stall in

such Temporary Parking Parcel. The Temporary Parking Parcel shall be used as temporary, as needed, over-flow parking in addition to the parking stalls to be located under the buildings located on the Property, including without limitation a smaller motorcycle or scooter parking stall located under a building if such smaller stall is selected by Owner at the time of purchase of the Unit. During this period of six (6) years or less, Declarant shall have the right to provide the Association and the Owners with equivalent replacement parking stalls for such Temporary Parking Parcel within 150 yards of the Temporary Parking Parcel (subject to comparable costs and expenses to the use of the Temporary Parking Parcel as determined by Declarant). If, at the end of this period, Declarant has not constructed or obtained sufficient parking stalls to take the place of the Temporary Parking Parcel such that each Unit shall have an associated parking stall, then Declarant shall assign and convey to the Association its rights, titles and interests to own, use and possess the necessary number of parking stalls located on the Temporary Parking Parcel.

- 3.11 Convertible Space and Convertible Land. It is expected that the Convertible Space in Building 320 will be converted into as many as 25 Units, and EXHIBIT F hereto shows the undivided interest allocated to the Convertible Space proportionate to the size of the Convertible Space vis-à-vis the aggregate size of all Units, including Convertible Space, within the Condominium Project. All of the Property other than the existing Buildings 320, 328 and 342 shall be deemed Convertible Land. No more than thirty (30%) of the total floor area of the Units created from the Convertible Land may be used for purposes other than Residential Units, the remaining seventy percent (70%) of the total floor area of the Units created from the Convertible Land shall be restricted exclusively to Residential Units. No more than 400 Units shall be created from the Convertible Land. The Units created from the Convertible Land shall be generally compatible and comparable to the Units in existing Buildings 320, 328, and 342 in terms of quality of construction, building materials, and general architectural style in the reasonable and good faith opinion of Declarant, and the Units created from the Convertible Land shall be generally similar, but not identical, to the Units in existing Buildings 320, 328, and 342 in the reasonable and good faith opinion of Declarant, and such new Units may differ with regard to size, floor plan, fixtures, and construction from the Units in existing Buildings 320, 328, and 342. Notwithstanding the foregoing, the determination of compatibility, comparability, and similarity of Units shall be vested solely and exclusively in the reasonable judgment of Declarant, and no provision set forth herein shall prevent Declarant from creating Units from the Convertible Land that Declarant in good faith believes are of similar general quality and desirability. Declarant makes no other assurances as to the improvements or Limited Common Areas and Facilities to be created on the Convertible Land, and Declarant expressly reserves the right to create any number, type, and size of Limited Common Areas and Facilities associated with the Convertible Land. Declarant hereby reserves the right to select the design and configuration of any improvements and Units constructed in any portion of the Convertible Space that in the judgment of the Declarant may be required to achieve the best development of the Property. Declarant reserves the right, in its sole discretion and without limitation, to create Limited Common Areas and Facilities within any portion of the Convertible Land and to designate common areas and facilities therein which may subsequently be assigned



as Limited Common Areas and Facilities to a specific building for the purpose of making parking spaces, carports, patios, decks, entries, exercise rooms, and any other type of Limited Common Areas and Facilities for such building or portion of a building as Declarant may see fit to create.

- 3.12 Expansion of Condominium Project. Declarant expressly reserves the option and right to expand the Condominium Project pursuant to section 57-8-13.6 of the Act by recording a supplemental Record of Survey Map and a supplement and amendment to this Declaration, which expansion shall be made subject to the provisions of this Article:
- 3.12.1 Consent of Owners Not Required. The consent of Unit Owners or mortgagees shall not be required for such expansion, and Declarant may proceed with such expansion at its sole option;
- 3.12.2 Expiration of Right to Expand. This option to expand the Condominium Project shall expire seven (7) years after the recording of this Declaration; however, Declarant may, at any time prior to the expiration of such period, terminate its option to expand by recording among the land records wherein this Declaration is recorded an executed and notarized document terminating this option.
- 3.12.3 Description of Additional Land. The “**Additional Land**” that may, at the option of Declarant, be made part of the expandable condominium, consists of the West Side Property as more particularly set forth in EXHIBIT B attached hereto.
- 3.12.4 Declarant’s Right to Add All or Portions of Additional Land. The Declarant need not add all or any portion of the Additional Land to the Condominium Project; however, Declarant may, at its sole discretion and without limitation, add all or any portion or portions of the Additional Land to the Property and may do so at different times.
- 3.12.5 Location of Improvements. Declarant makes no assurances as to the locations of any improvements that may be made on any portions of the Additional Land added to the Condominium Project.
- 3.12.6 Maximum Number of Units. The improvements to be placed on the Additional Land shall contain no more than 400 hundred Units. The maximum number of units per acre that may be created on any portion of the Additional Land hereafter added to the Condominium Project shall not exceed the number of units per acre on the Property at the time of such expansion by more than a factor of ten.
- 3.12.7 No Assurance of Compatibility with Structures in Phase One. Although Declarant intends to erect structures on portions of the Additional Land added to the Condominium Project that will be generally compatible with the structures on the Property originally within the Condominium Project, Declarant makes no assurances as to whether Units that may be erected on the additional land will be compatible with or identical to Units in Phase I or subsequent phases of the

Condominium Project, except that all such structures will be generally consistent with the original improvements in terms of quality of construction. Declarant hereby reserves the right to select the design and configuration of any improvements erected on any portion of the Additional Land added to the Condominium Project that in the judgment of the Declarant may be required to achieve the best development of the Property.

- 3.12.8 Other Improvements. In addition to Residential Units, other improvements to be placed on the Additional Land shall be limited to parking, recreational, service and commercial facilities. No more than thirty percent (30%) of the Additional Land and floor area of additional units will be utilized for commercial facilities.
- 3.12.9 Limited Common Areas. Declarant reserves the right, in its sole discretion and without limitation, to create Limited Common Areas and Facilities within any portion of the Additional Land and to designate common areas and facilities therein which may subsequently be assigned as Limited Common Areas and Facilities specific to certain buildings for the purpose of making parking spaces, carports, patios, decks, entries, and any other types of Limited Common Areas and Facilities for such building or portion of a building as Declarant may see fit to create.
- 3.12.10 Reservations as to Future Use. Any portion of the Additional Land which is hereafter added to the Condominium Project may be used for any purpose permitted by the prevailing zoning regulations.
- 3.12.11 Completion of Improvements. All improvements on any portion of the Additional Land to be hereafter added to the Condominium Project shall be substantially completed prior to such annexation into the Condominium Project.
- 3.12.12 Adjustment of Undivided Interests. In the event Additional Land is hereafter added to the Condominium Project, Declarant shall record an amendment to this Declaration setting forth the reallocated percentages of undivided interests in the common areas and facilities, which percentages shall be computed by dividing the square footage of each Unit by the total square footage of all Units in the Condominium Project as expanded. This section 3.12.12 shall not be deemed or construed to limit the right of Declarant to create Limited Common Areas and Facilities to be used only by the Owners of certain Units, and Declarant expressly reserves the right to create any number, type, and size of Limited Common Areas and Facilities associated with the additional land.
- 3.13 Contractible Condominium. Declarant hereby reserves the right to contract the Condominium Project by withdrawing all or any portion of the Convertible Space or Convertible Land from the Condominium Project. Notwithstanding the foregoing, if Declarant contracts the Condominium Project by withdrawing any parking stalls that are associated with an existing Unit, Declarant shall provide such Unit with a new parking stall within 150 yards of the previous parking stall. Other than the foregoing requirement

to provide replacement parking stalls, there are no limitations on Declarant's right to contract the Condominium Project.

3.13.1 Consent of Owners Not Required. The consent of Unit Owners or mortgagees shall not be required for such contraction of the Condominium, and Declarant may proceed with such contraction at its sole option;

3.13.2 Expiration of Right to Contract. This option to contract the Condominium Project shall expire seven (7) years after the recording of this Declaration, however, Declarant may, at any time prior to the expiration of such period, terminate its option to contract with regard to any portion of the Condominium Project by recording among the land records wherein this Declaration is recorded an executed and notarized document terminating this option.

3.13.3 Description of Contractible Property. All of the Property described in EXHIBIT A attached hereto is hereby deemed contractible and may, at the option of Declarant, be withdrawn from the Condominium Project, except for the portion of the Property described in EXHIBIT E attached hereto. Unless a recorded document terminates the Declarant's option to contract the Condominium Project, such option to contract shall not extend to building 328 ( as described on the recorded plat, but is shall extend to all other portions of the Property as described in EXHIBIT A.

3.13.4 Declarant's Right to Withdraw All or Portions of the Property. The Declarant may, at its sole discretion and without limitation, withdraw all or any portion or portions of the Property from the Condominium Project, as referenced in Section 3.13.3, and may do so at different times.

#### **ARTICLE 4** **MAINTENANCE AND UTILITIES**

4.1 Maintenance of Units and Exclusive Limited Common Areas and Facilities. An Owner may make non-structural alterations within his Unit, but no Owner shall make any structural or exterior alterations of the Common Areas and Facilities or the Limited Common Areas and Facilities without the prior written approval of the Board. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs, and replacements within his own Unit and within any Limited Common Area and Facilities appurtenant to the Owner's Unit, and the responsibility for shared Limited Common Areas and Facilities shall be allocated among the Owners of the appurtenant Units in proportion to each Owner's Allocated Interest. Such obligation shall include, without limitation:

(a) the maintenance of all interior and exterior doors, including thresholds and door jams, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces of floors, ceilings, or interior walls (all other portions of the walls, floors, or ceilings are part of the Common Areas and Facilities);

(b) repair and replacement of all windows, skylights, and door glass or equivalent materials and the interior and exterior cleaning of such windows and door glass within the Owner's Unit and within any Limited Common Areas and Facilities appurtenant to the Owner's Unit;

(c) the maintenance of, in an open and unobstructed condition, all sewer and drainage pipes, water and other utility lines serving an Owner's respective Unit between the points at which the same enter the respective Unit and the points where the same join the utility lines serving other Units;

(d) maintenance, replacement, repair and restoration of all of the following which service an Owner's Unit exclusively: lighting fixtures (except exterior building mounted lights and walkway lights which are not located within patios and balconies), fans, plumbing fixtures, stoves, refrigerators, washers, dryers, hot water heaters, air conditioning units (including compressors, condensers and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install; and

(e) the maintenance of the Unit and all exclusive Limited Common Areas and Facilities, such as patios and balconies (including all materials above or upon the support structure, and railings and posts), exterior screens, skylights, shutters, and chimney flues, that are within his or her exclusive control in a clean and sanitary condition, free of pests and rodents, and in good order and repair, except that the sweeping and maintenance of any parking spaces and driveways that are designated as Limited Common Areas and Facilities hereunder, shall be the responsibility of the Association.

4.2 Maintenance of Common Areas and Facilities and Non-Exclusive Limited Common Areas and Facilities. The Association, or its fully delegated representative, shall:

(a) Maintain the Common Areas and Facilities and non-exclusive Limited Common Areas and Facilities in accordance with the maintenance recommendations set forth in the Comprehensive Maintenance Manual;

(b) In addition to following the minimum guidelines and recommendations set forth in the Comprehensive Maintenance Manual, maintain, repair, keep clean, remove snow from and otherwise manage in a professional and first class manner the Common Areas and Facilities and non-exclusive Limited Common Area and Facilities, including, but not limited to, the landscaping, parking areas, streets and recreational facilities, if any, located thereon and maintain all parking areas and exterior building mounted lights not within patios and balconies, walkway and landscape area lights (located outside of patios and balconies), the structural support components of patios and roofs and the flashings and other materials on patios and roofs that were installed to exclusively function as a roof;

- (c) Replace injured and diseased trees or other vegetation in any Common Areas and Facilities, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil or for aesthetic purposes;
- (d) Place and maintain upon any Common Areas and Facilities, such signs, markers and lights as the Board may deem appropriate for the proper identification, use and regulation thereof, subject to the approval of the Board;
- (e) Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Areas and Facilities as the same become due and payable;
- (f) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Areas and Facilities and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall determine, in its sole discretion, the appropriate maintenance of the Common Areas and Facilities. If the need for maintenance or repair is caused through the willful or negligent act of an Owner, his or her family, guests, licensees, lessees or invitees, the cost of such maintenance or repair shall be paid by such Owner, upon demand, to the Association, and the Association may enforce collection of such amounts as provided herein below for the collection of Assessments.

- 4.3 Owner Default in Maintenance. If an Owner fails to so maintain his Unit or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Condominium Project, or if an Owner fails to observe any covenant or restriction imposed on such Owner by the terms of the Declaration, then the Board or its authorized representative shall give notice to such Owner stating with particularity the nature of the default and the collective action which the Board determines to be required and requesting that the same be carried out within a period of seven (7) days after the giving of such written notice. If such Owner fails to carry out such action within the period specified by the notice, the Board may cause such action to be taken and may levy a Special Assessment for the cost thereof on such Owner, such Special Assessment to be due and payable within thirty (30) days after the Board gives written notice thereof and to be secured by the Assessment lien created in Section 6.1 of this Declaration.
- 4.4 Utilities. All utilities for individual Units (except those utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners.
- 4.5 Special Maintenance Obligations for Certain Units. In addition to the obligations and responsibilities set forth in Section 4.1, the Owners of the following Units shall have special maintenance obligations with respect to their Units as described in this Section. The Owners of Unit Nos. 104, 105, 106 and 107 shall take special care to

insure that their Units are kept clean, in good order and without undue clutter that might otherwise be easily seen through their ground floor windows and thus detract from the first class appearance of the Condominium Project. Likewise, the Owners of Unit Nos. 106 and 107 located on the ground level will insure that their balconies will be kept clean, in good order and without undue clutter to promote a positive image of the Condominium Project. In each of these cases, the Board shall determine in its sole but good faith discretion whether the Owners of these Units are complying with their responsibilities under this Section. If they are not, the Board may, upon seven (7) days prior notice, enter, clean and repair such Units and charge the cost of such work directly to the Unit Owners as Special Assessments and take any other actions permitted under Section 9.10 or the other provisions of this Declaration or by statute or other law or regulation that it deems necessary to cure such problems (including, without limitation, entering the Unit and removing from it and storing any clutter or similar personal property at the sole cost of the Owner which clutter, if not claimed by the Owner within thirty (30) days of its removal, may be sold and the proceeds kept by the Association or donated to charity as the Board sees fit).

- 4.6 Declarant's Non-Liability. Declarant shall not be liable for any failure on the part of the Association, Board or any Owner to comply with their maintenance and other obligations described in this Article 4.

## ARTICLE 5 MANAGEMENT

- 5.1 Association. The Association will be organized no later than the date the first Unit in the Condominium Project is conveyed to an Owner other than Declarant to serve as the governing body for all Owners and shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Areas and Facilities, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, the Declaration and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles and Bylaws, including, without limitation, the right to assign its future income. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the Declaration, the Articles and the Bylaws.
- 5.2 Membership. Membership in the Association shall at all times consist exclusively of the Unit Owners and each Owner shall be a member of the Association so long as he or she shall be an Owner and such membership shall automatically terminate when he or she ceases to be an Owner. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association.
- 5.3 Voting and Turnover Date.

5.3.1 Two Classes of Membership. The Association shall have two (2) classes of voting membership:

5.3.1.1 Class A. Class A Members shall be all Owners (including the Declarant). Each Owner of a Unit, as a Class A Member, shall be entitled to a percentage vote equal to the percentage listed on EXHIBIT F for such Unit. As required by Section 57-8-7(2) of the Act, the percentages in EXHIBIT F reflect the undivided interest allocated to the Convertible Space proportionate to the size of the Convertible Space vis-à-vis the aggregate size of all Units, including Convertible Space, within the Condominium Project, which allocation to Building 320 is .2552652. The percentages in EXHIBIT F may be updated from time to time by Declarant without the vote of the Owners to reflect the expansion of the Condominium Project and the designation of new Units within the Condominium Project. When more than one Person owns an Interest in a Unit, each such Person shall be a member of the Association and each Co-Owner shall be entitled to a percentage vote calculated by dividing the percentage vote allotted to the Unit, as reflected on EXHIBIT F, by the number of Co-Owners for such Unit, but in no event shall more than the allotted percentage vote be cast with respect to any Unit.

5.3.1.2 Class B. The Class B Member shall be the Declarant. Declarant, as the Class B Member and in addition to its rights as a Class A Member, shall have the right to control the Association to the extent of having the exclusive right (either directly or through a person designated by the Declarant) to elect, appoint and remove the members of the Board and the officers of the Association until the Turnover Date (as hereinafter defined). The special control rights of the Declarant, as the Class B Member, shall cease and terminate on the Turnover Date.

5.3.2 Turnover Date. Subject to the provisions of Section 5.3.3, the Turnover Date shall occur upon the earlier of the following (the "Turnover Date"):

5.3.2.1 The date ninety (90) days after (i) the conveyance by Declarant of Units to which seventy-five percent (75%) of the undivided interests in the common areas and facilities appertain or (ii) the date all Additional Land has been added to the project, which must occur within seven (7) years of the effective date of this Declaration, and all Convertible Land has been converted, which must occur within five (5) years of the effective date of this Declaration, whichever occurs last;

5.3.2.2 The date six (6) years after the effective date of this Declaration; or

5.3.2.3 The date on which Declarant submits to the Board Declarant's written, voluntary resignation as the Class B Member;

5.3.3 Punch List; Settlement; Conflict of Interest.

- 5.3.3.1 Punch List. Notwithstanding anything else contained in Section 5.3.2 (unless Declarant in its sole discretion gives an express, written waiver of the protections of this Section 5.3.3), the Turnover Date shall not occur until the Board, acting on behalf of the Association, has hired a qualified engineer to inspect the Condominium Project for design defects, construction defects and code violations. Once this inspection has been completed, a punch list (the "Punch List") of any defects and violations shall be provided to the Board and Declarant. Declarant may elect to cure the items listed on the Punch List, pay the estimated cost to cure such items directly to the Board or negotiate an alternative resolution with the Board.
- 5.3.3.2 Settlement Agreement. As soon as Declarant has cured the Punch List items, paid the Board the estimated cost to cure the Punch List items or agreed upon an alternative resolution with the Board, Declarant and the Board shall execute a binding, written release and settlement agreement (the "Settlement Agreement") in the form attached as EXHIBIT H pursuant to which the Board, acting on its behalf and on behalf of the Association and the Owners, which Settlement Agreement shall forever release, discharge, acquit, terminate, waive and surrender any and all rights, titles, actions, claims, damages and interests that it might have against Declarant and/or Declarant's owners, directors, officers, employees, agents, attorneys, representatives, contractors and affiliates (collectively, "Declarant's Affiliates"), including without limitation all such rights, claims, or actions with respect to (i) the items listed on the Punch List, (ii) actions and omissions taken or not taken by Declarant and/or Declarant's Affiliates with regard to the construction, design, development, management, supervision, operation and control of the Condominium Project and (iii) other rights, claims, damages, remedies, actions and interests, known and unknown, present and future, that the Owners and Association may possess with respect to the Condominium Project (excluding any obligations of Declarant with respect to its ongoing ownership of Units, if any, which obligations are similar to the obligations of the other Owners). Notwithstanding anything else contained herein, (unless Declarant in its sole discretion gives an express, written waiver of the protections of this Section 5.3.3.2), the Turnover Date shall not occur until the Board, acting on behalf of the Association, has executed the Settlement Agreement.
- 5.3.3.3 Conflicting Interest Transaction. At the time Declarant enters into the Settlement Agreement with the Association, Declarant because of its status as the Class B Member, as an Owner and, if applicable, as a member of the Board and an officer of the Association, shall have a conflict of interest. Hence, a majority of the disinterested members of the



Board shall in good faith consider, review and specifically vote (as their conscience dictates) to authorize, approve or ratify the Settlement Agreement. If this majority of the disinterested members of the Board in good faith vote to authorize, approve or ratify the Settlement Agreement, then the Settlement Agreement shall not be void or voidable or be enjoined, set aside or give rise to an award of damages or other sanctions in a proceeding by a member of the Association or by or in the right of the Association as provided in Section 16-6a-825 of the Utah Code Annotated, as amended.

- 5.3.4 Retention of Class A Voting Rights. Upon the Turnover Date, Declarant shall retain the voting rights of a Class A Member even though the special voting and control rights of the Class B Member have ceased and terminated.
- 5.3.5 Voluntary Surrender of Right to Elect Board and Officers. Declarant may voluntarily surrender the right to elect, appoint and remove the members of the Board and the officers prior to the Turnover Date, but, in that event, Declarant may require that specified actions of the Association or the Board taken prior to the Turnover Date, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.
- 5.3.6 Transfer of Control. Upon the Turnover Date, the process of transferring control of the Association from Declarant to the Owners shall commence and be completed within a reasonable period of time. This process shall include the Owners' election of the Board of Directors and shall be considered completed on the date of the initial meeting of the Board of Directors elected by the Owners. The Owners' election of the initial Board of Directors may be conducted at a regular or special meeting of the Association or by a mailed balloting procedure, within thirty (30) days following the Turnover Date.
- 5.4 Board of Directors. The governing body of the Association shall be the Board of Directors elected pursuant to the Bylaws. The Board shall consist of not less than three (3) members and not more than five (5) members. Except as otherwise provided in this Declaration, the Bylaws, or Association Rules, the Board may act in all instances on behalf of the Association. The Board may, as it deems appropriate, adopt, amend and repeal Association Rules. Unless otherwise expressly stated herein, the Board shall act by the majority vote of its members. The Board shall have the right at any time after the execution of the Settlement Agreement to initiate, prosecute and defend any and all legal actions, litigation and arbitration for and on behalf of the Association, except for initiating or making a counterclaim or cross claim in any action, litigation or arbitration claiming any negligence, intentional misconduct or fault on behalf of Declarant and/or Declarant's owners, directors, officers, employees, agents, attorneys, representatives and contractors with respect to the design, materials, renovation and construction of the Condominium Project, which instead shall require (i) the Board's recommendation to the members of the Association to initiate such action and (ii) the approval of at least seventy-five percent (75%) of the percentage votes allocated to each Class A Member at a meeting duly called

and held for such purpose. In purchasing or otherwise taking title to a Unit, each Owner agrees and acknowledges that the initial purchase of the Unit is sufficient consideration for any limitation on legal action as set forth in this Section 5.4. No Owner shall have, and each Owner hereby waives, any right to initiate or prosecute any action, litigation or arbitration claiming any negligence, intentional misconduct or fault on behalf of Declarant and/or Declarant's owners, directors, officers, employees, agents, attorneys, representatives and contractors with respect to the design, materials, renovation and construction of the Condominium Project, except for such actions brought by the Association pursuant to the limitations set forth in this Section 5.4 and Section 16.19 below.

- 5.5 Qualification of Directors. Except for Board members elected or appointed by Declarant, each Director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership, limited liability company, or trust, a Director may be an officer, partner, member, manager, trustee or beneficiary of such Owner). If a Director shall cease to meet such qualifications during his or her term, he or she will thereupon cease to be a Director and his or her place shall be filled by a replacement Director appointed by the remaining members of the Board for the remainder of that Director's term.
- 5.6 Action by Owners. Except as specifically provided herein, the Board may not act on behalf of the Association to amend or terminate this Declaration, to elect members of the Board, except in filling vacancies in its membership for the unexpired portion of any term, or to determine the qualifications, powers and duties or terms of the Board of Directors.
- 5.7 Annual Meeting. The Association shall conduct an annual meeting as provided in the Bylaws.
- 5.8 Right of Association to Enter Units. The Association, acting through the Board or its duly authorized agent, shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or in any Unit to abate any infractions, to make repairs, or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by the lien provided in Section 6.1.
- 5.9 Association Rules. The Board may adopt and administer Association Rules in furtherance of the Bylaws for the regulation and operation of the Condominium Project.
- 5.10 Working Capital Fund. Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services needed for the operation of the Condominium Project. The initial amount of the working capital fund shall be at least equal to two (2) months of estimated Common Expenses for each Unit. The Declarant can collect these at the time the sale of each Unit is closed or any time thereafter. Any amounts collected and paid into this fund shall not be considered advance payments of Assessments. This fund cannot be used by the Declarant to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits; provided, however, that to the extent Declarant has paid the Association for an unsold Unit's share of this fund, Declarant shall be entitled to a reimbursement, to be

paid at the time of closing out of the closing proceeds, for such amounts when such Unit is sold plus seven percent (7%) interest per annum on the amount of such contribution. This fund shall be transferred to the Association after the Turnover Date.

- 5.11 Reserve Fund. The Association shall maintain an adequate reserve fund for maintenance, repair and replacement of those Common Areas and Facilities that must be replaced on a periodic basis. Such reserve fund shall be created, replenished and derived from part of the monthly Assessments (that shall be specifically billed and set aside for this purpose). To the extent the Board deems necessary, surplus monies of the Association may be retained as additional reserves rather than being paid to Unit Owners or being credited to future Assessments. Such reserve fund shall be created by the Association no later than the Turnover Date.
- 5.12 Availability of Condominium Documents. The Association will maintain current copies of this Declaration, the Articles, Bylaws, and Association Rules concerning the Condominium Project and the Association's own books, records, and financial statements available for inspection, upon request, during normal business hours by any Owner or Lender (or any insurer or guarantor of a Lender). The inspecting Owner or Lender may pay to have copies made of this Declaration, the Articles, Bylaws and Association Rules although no copies of the Association's books, records and financial statements may be made without the prior written consent of the Board that may be given or withheld in its sole discretion.
- 5.13 Managing Agent. The Board may contract with a professional management agent to assist the Board in the management and operation of the Condominium Project and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, to impose a Special Assessment and to authorize foreclosure of an Assessment lien.

## **ARTICLE 6** **COVENANT FOR ASSESSMENTS**

- 6.1 Creation of Lien and Personal Obligation for Assessment. Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree to pay to the Association such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, collection charges, attorneys' fees, court costs and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor.

- 6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance, care, preservation and protection of the Condominium Project, enhancing the quality of life in the Condominium Project and the value of the Condominium Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and Facilities, or in furtherance of any other duty or power of the Association.
- 6.3 Regular Assessment. The Board is expressly authorized to adopt and amend budgets from time to time. Not later than thirty (30) days prior to the beginning of each fiscal year, the Board shall adopt a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board may, but is not required to, send a written summary of the budget to all Owners within thirty (30) days after the adoption of the proposed budget. The Board shall at that time determine the amount of the regular Assessments to be paid by each Owner. Each Owner shall thereafter pay to the Association his or her regular Assessment in equal monthly installments on the first day of each month. In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then promptly determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of the regular Assessment against each Owner, and the date or dates when due. The Board shall adopt budgets in good faith as fiduciaries for the benefit of the Association, and the Owners shall have no right to ratify any budget, or amendment thereof, adopted by the Board. If the Board has reason to believe that the costs associated with different buildings and different Limited Common Areas and Facilities are material, the Board is hereby authorized to allocate costs such that the assessment for each Unit reasonably reflects the actual costs to the Association related to such Unit. Because Units will have different Limited Common Areas and Facilities, the Board is authorized to account for such differences in the assessments such that the total assessments may not be equal for every Unit on a strict square footage basis. In addition, the Board may recognize that a Unit in one building may have a higher total assessment than a Unit of the same size in another building due to the differing costs associated with the different Limited Common Areas and Facilities. Moreover, because an unoccupied Unit does not consume utilities and other services with variable costs to the Association or use the Common Areas or Facilities in any way, the Board may from time to time waive all or part of the assessment for an unoccupied Unit, and no assessment shall be charged against the unoccupied Units owned by Declarant prior to the first sale or conveyance of such Unit unless it is determined in good faith by the Board with clear and convincing evidence that a percentage of the regular assessment must be charged against such unoccupied Units to pay for the Association benefits, utilities, and services actually consumed and used by such unoccupied Units.
- 6.4 Capital Improvement Assessments. In addition to regular Assessments, the Board may levy in any fiscal year a capital improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or replacement

(other than due to destruction) of a described capital improvement upon the Common Areas and Facilities, including the fixtures and personal property related thereto. The Board shall not impose a capital improvement Assessment exceeding ten percent (10%) of the then estimated annual Common Expenses without the approval of Owners holding a majority of the Allocated Interests in the votes of the Association. All amounts collected as capital improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account or the Association's account for reserve funds, to be held in trust for such purposes and said funds shall not be commingled with any other funds (other than reserve funds) of the Association.

- 6.5 Assessment Percentages. Except as otherwise provided herein, including without limitation differences associated with different Limited Common Areas and Facilities, all Assessments (other than Special Assessments) shall be an amount based on the Allocated Interest for each Unit as contained in EXHIBIT F, as amended from time to time by Declarant without the vote of the Owners to reflect the new percentages as the Condominium Project and number of Units expands.
- 6.6 Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of regular and Special Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to an Owner shall not relieve any Owner of his liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time after delinquency of such payment.
- 6.7 Certificate of Payment. The Association shall, within twenty (20) business days after written demand, furnish to any Owner liable for Assessments a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- 6.8 Special Assessments. Special Assessments may be levied by the Board against a Unit and its Owner to reimburse the Association for:
- (a) costs incurred in bringing an Owner and his or her Unit into compliance with the provisions of the Declaration, the Articles, the Bylaws or Association Rules;
  - (b) costs associated with the maintenance, repair or replacement of a Limited Common Area and Facility assigned to such Unit;

(c) any other charge designated as a Special Assessment in this Declaration, the Articles, the Bylaws or Association Rules; and

(d) attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

In the event the Association undertakes to provide materials or services which benefit individual Units and which can be accepted or not by Individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment.

- 6.9 Date of Commencement of Assessments. Regular and other Assessments as to Units within the Condominium Project for which construction has been substantially completed (which shall be defined as the later of issuance of a Certificate of Substantial Completion by the architect of record for the Condominium Project for a particular Unit or issuance of a Certificate of Occupancy by the City of Salt Lake City for a particular Unit, but in no event later than actual occupancy of the Unit) shall commence as to all such substantially completed Units on the first day of the month following the conveyance of the first Unit by Declarant to an Owner. Thereafter, regular and other Assessments shall commence as to newly completed Units on the first day of the month following the substantial completion of construction for each respective building. Until the Association makes an Assessment, Declarant shall pay all Common Expenses of the Association. No Assessments shall be payable on Units for which construction has not been substantially completed. Notwithstanding the foregoing, if necessary for the Association to be able to pay all Common Expenses in a timely manner, Declarant shall be obligated to pay to the Association any deficiencies in funds available to pay Common Expenses due to Declarant not having paid an Assessment on any uncompleted Units, but only to the extent such Units have directly caused the Association to incur such Common Expenses.
- 6.10 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its sole discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Condominium Project, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.11 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim by an Owner or other person that the Association is not properly exercising its duties and powers as provided in this Declaration.

- 6.12 Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

**ARTICLE 7**  
**EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES**

- 7.1 Due Date and Delinquency. The first day of each month shall be the Assessment due date for that month. Any Assessment that is not paid within ten (10) days after it becomes due shall be delinquent. Whenever an Assessment is delinquent, the Board may at its option invoke any or all of the sanctions provided for herein.
- 7.2 Collection Charge. If any Assessment is delinquent, the Owner shall be obligated to pay the collection charge then provided for in the Bylaws. The amount of such collection charge until paid shall constitute part of the Assessment lien as provided for in Section 6.1 of this Declaration.
- 7.3 Interest. If any Assessment is delinquent, interest at the rate set forth in the Bylaws at the time may be assessed on the amount owing from the date due until such time as it is paid.
- 7.4 Private Action. If any Assessment or other fee required hereunder to be paid by Owner to the Association is delinquent, the Association may (i) temporarily suspend or shut-off the utilities that service the delinquent Owner's Unit until such time as the delinquent Assessment is paid in full (together with any fees, charges, legal fees and costs of enforcement) and (ii) collect rent directly from any tenant of a delinquent Owner which rent shall be applied first to the payment of all late fees, charges, legal fees and costs of collection and then to the delinquent Assessment. Each Owner hereby appoints the Association as its attorney in fact for the purpose of collecting rents pursuant to the provisions of this Section 7.4, and this appointment is coupled with an interest in real property such that it is irrevocable. Each Owner hereby agrees to hold its tenants harmless and to give tenants full credit for any rental payment made to the Association at the request of the Association.
- 7.5 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or foreclose the Assessment lien; provided, however, that the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any and all other remedies. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and his Unit and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and/or collection charges, if appropriate) in the event that a judgment is obtained by the Association. Each Owner vests in the Association or its assigns the right and power to bring actions at law, equity and/or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

- 7.6 Foreclosure Sale. Any foreclosure provided for in this Declaration is to be conducted in compliance with applicable provisions relating to the foreclosure of realty mortgages in the State of Utah. The Association, upon approval by a majority of the Allocated interests in the votes of the Association, may through its duly authorized agents have and exercise the power to bid on the Unit at the foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit.
- 7.7 Suspension of Votes. The Board may suspend the obligated Owner's right to vote on any matter at regular or special meetings of the Association and the Owner's right to use all or any portion of the Common Areas and Facilities (exclusive of the Limited Common Areas and Facilities appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

## ARTICLE 8 EASEMENTS

- 8.1 General Easements to Common Areas and Facilities and Units. Subject to this Declaration and the Association Rules, non-exclusive reciprocal easements are hereby reserved and created for the purpose of support, ingress and egress to each Unit, access, use and enjoyment in favor of each Owner, upon, across, over, under and through the Common Areas and Facilities (exclusive of the Limited Common Areas and Facilities), including the use of all pipes, wires, ducts, cables, conduits, and public utility lines, which easements shall be appurtenant to each Unit. The Association, acting through the Board or its authorized agent, and public utility companies providing service to the Condominium Project, shall have non-exclusive easements with the right of access to each Unit to make inspections, to remove violations, and to maintain, repair, replace or effectuate the restoration of the Common Areas and Facilities accessible from such Unit; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Association, acting through the Board or its authorized agent, shall have the non-exclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Areas and Facilities for purposes necessary for the proper operation of the Condominium Project including, without limitation, the construction, maintenance, repair and renovation of the Common Areas and Facilities, the Limited Common Areas and Facilities and the Units. The Association and the Board shall exercise such rights in a reasonable manner and shall give reasonable notice under the circumstances before exercising such rights and commencing any work related thereto (although in no event shall any notice be required for access in an emergency situation). Each Owner shall fully cooperate with the Association and the Board in their exercise of these rights and performance in connection with the same, and the Association shall repair any damage to the Unit caused by the exercise of these rights, unless such damage is to fixtures or improvements installed in violation of this Declaration.
- 8.2 Public Utilities. Easements and rights over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to



serve the Condominium Project are hereby reserved by Declarant and, after the Turnover Date, to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights shall not unreasonably interfere with the use of the Common Areas and Facilities and the Units by the Owners or Occupants. Declarant or the Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and right-of-way in, on, over or under the Common Areas and Facilities for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi public improvements or facility, and each Owner in accepting the deed in a Unit expressly consents to such easements and rights of way and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Units in the Condominium Project) as attorney in fact of such Owner to execute any and all instruments conveying or creating such easements or right-of-way. However, no such easement can be granted if it would permanently and unreasonably interfere with the use, occupancy, or enjoyment by any Owner or such Owner's Unit.

- 8.3 Easements for Encroachments. If any portion of the Common Areas and Facilities now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or the Common Areas and Facilities, or if any such encroachment shall occur hereafter as a result of the manner in which the buildings have been constructed or due to settling, shifting, alteration, replacement, repair, or restoration by Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.
- 8.4 Development Easements for Declarant. Until all Units have been sold by Declarant, there are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, easements and rights upon, across, over, under and through the Condominium Project for construction, display (including the use of the Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the erection, remodeling and sale or lease of Units within the Condominium Project and any surrounding properties that may be located near the Property and developed now or in the future by Declarant, its successors and assigns; provided, however, that no such use by Declarant or its agents shall otherwise block or restrict Owners or Occupants in the reasonable access to their Units.

## **ARTICLE 9** **USE RESTRICTIONS**

- 9.1 Signs. No signs whatsoever (including, but not limited to commercial, political, sale or rental and similar signs) shall be erected or maintained on the Property whether in a window or otherwise, except:
- (a) signage as allowed by the laws, ordinances or regulations of Salt Lake City, Utah with respect to commercial signage for the Commercial Units;

- (b) such signs as may be required by legal proceedings;
- (c) one house unit number, one storage unit number, and one parking stall number for identification as originally placed by the Declarant;
- (d) such signs, the nature, number and location of which have been approved by the Board in advance; and
- (e) street identification and traffic directional signs erected on or adjacent to the Condominium Project by Salt Lake City, Salt Lake County, or any other municipal entity, which shall signs not require prior approval from the Board.

Nothing included herein shall prevent Declarant and its agents and assigns from utilizing reasonable signs, flags, markers, and sales devices in furtherance of sales activities until all Units have been sold by Declarant.

9.2 Nuisance. No noxious or offensive activity, including, without limitation, loud parties or loud noise, shall be carried on or in the Condominium Project, nor shall any activity which might be or become an annoyance or nuisance to Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. Nothing in this Section or in any other Section of this Declaration shall be deemed to prevent Declarant or its agents from engaging in any and all forms of construction and sales activities until all Units have been sold by Declarant and, to the limited extent necessary, Declarant's or its successors' and agents' work to develop, renovate, lease and sell the surrounding properties located within or near the Condominium Project including, without limitation, those buildings known as Building No. 320 West 200 South, the two buildings that comprise 180 South 300 West, 342 West 200 South; also those buildings and properties on the same city block on the North side and on the West side of the 328 West building. In addition, notwithstanding anything else contained herein, Declarant, its successors and assigns shall be permitted to place and replace any signage, flags and markers that it deems appropriate in its sole discretion for each commercial tenant or occupant of the Commercial Units on or about the exterior walls, windows and doors on or near such Commercial Units.

9.3 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Condominium Project or used therein unless the same and its proposed use are approved by the Board. Nothing included herein shall be construed as preventing Declarant from using temporary structures or trailers for construction and/or sales purposes or engaging in all forms of construction and sales activities within the Condominium Project.

9.4 Parking and Use of Covered Parking/Visitor Parking. Unless otherwise permitted by the Association, and except for "Customary Parking" and "Short Term Parking," as permitted by this Section, "**vehicles**", defined as automobiles or other motorized or drawn means of transportation of any type (including, without limitation, trucks, motorcycles, trailers, campers, vans, recreational vehicles or boats) shall not be parked, stored, or located within any portion of the Condominium Project, including any Unit, Limited Common Areas and Facilities, or Common Areas and Facilities.

9.4.1 "**Customary Parking**" shall mean the parking of operable automobiles, motorcycles, pick-up trucks and bicycles (1) inside the parking garage in building 328 West 200 South, and (2) on the Temporary Parking Parcel as provided in Section 3.10 above. Such vehicles must not be used for commercial purposes. Those vehicles parked inside the parking garage shall not exceed 15 feet 6 inches in length, 7 feet 6 inches in width and 6 feet 8 inches in height above ground level and must conform to specific size limitations imposed on certain parking stalls by Declarant or the Board. Those vehicles parked in the Temporary Parking Parcel stalls shall not exceed 18 feet in length, 8 1/2 feet in width, and ten (10) feet in height above ground level.

9.4.2 "**Short Term Parking**" shall mean the use of designated parking areas within the Condominium Project for parking of operable vehicles belonging to invited guests of Owners and Occupants including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants as well as the parking of vehicles belonging to or being used by Owners, Occupants and invitees during social engagements and for loading and unloading purposes. The Association may adopt Association Rules relating to the admission and Short Term Parking of vehicles within the Condominium Project and the use of the visitor parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Association, the right to remove or cause to be removed any vehicles that are improperly parked, restrictions on the time visitor spaces may be used, and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be Special Assessments. Nothing included herein shall be construed to prevent Declarant from using temporary structures or trailers for construction and/or sales purposes or engaging in all forms of construction and sales activities within the Condominium Project. Declarant shall have a continuing right to utilize for its own purposes all of those parking stalls not specifically designated for the use of Owners, Occupants and their Guests.

9.5 External Fixtures. No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, hot tubs or spas, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, landscaping and planting, other than those provided in connection with the original construction of the Condominium Project, and any replacements thereof, and other than

those approved by the Board, and any replacements thereof, shall be constructed, erected, or maintained on the Condominium Project. The foregoing notwithstanding, nothing included herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Condominium Project.

- 9.6 Window Covers. Only curtains, drapes, shades, shutters, and blinds may be installed as window covers, and all such window covers shall be approved in advance by the Board except for any window covers placed on the Commercial Units that must only be approved by Declarant, its successors and assigns. No window shall be covered by paint, foil, sheets or similar items. The Board may adopt Association Rules regulating the type, color and design of the external surface of window covers except for the Commercial Units.
- 9.7 Laundering. Unless otherwise permitted by the Board, external laundering and drying of clothing and other items is prohibited. All washers and dryers must be regularly maintained and kept in good working condition to prevent leaking, flooding and loud or noisy operation.
- 9.8 Outside Speakers and Amplifiers. No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of, any Unit without the prior written approval of the Board.
- 9.9 Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Condominium Project.
- 9.10 Unightly Items. All rubbish, debris, unsightly materials or broken or damaged objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon, including, without limitation, any Limited Common Areas and Facilities (as they are described throughout this Declaration). Refuse containers and machinery and equipment not a part of the Units shall be prohibited upon any Unit and any Limited Common Areas and Facilities unless (i) obscured from the view of adjoining Units and Common Areas and Facilities, (ii) obscured from the view of other buildings and sites and (iii) approved by the Board, except that Units may contain machinery and equipment commonly recognized as appropriate for domestic use within a Unit, including without limitation washing machines, home entertainment equipment, and other common household appliances located within a Unit, and well maintained patio furniture and grills may be located on a balcony of a Unit. Trash and garbage not disposed of by equipment contained within the Units shall be placed in containers by Owners and Occupants for removal from the Condominium Project in accordance with Association Rules applicable thereto adopted by the Board. The Board may adopt rules applicable to the provisions of this Section and their enforcement, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. The Board also shall have the right, upon seven (7) days prior notice, except in the event of an emergency, to enter, clean, maintain, repair and cure any damage or remove any clutter (together with the right to store, sell and donate

described in Section 4.5 above) in and to any Unit or Limited Common Areas and Facilities in the event of an Owner's breach of this Section or any of the terms and provisions contained in this Declaration, and charge the cost of such work directly to the Unit Owner in question. Any charges so assessed shall be deemed to be a Special Assessment. The foregoing notwithstanding, nothing included herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Condominium Project.

9.11 Oil and Mineral Activity. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the surface of the Condominium Project, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be installed upon the surface of the Condominium Project or within five hundred (500) feet below the surface of the Condominium Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Condominium Project. The foregoing notwithstanding, nothing contained herein shall be construed as preventing Declarant, Declarant's agents and assigns or the Association from engaging in well drilling for water to provide or to maintain heating and cooling systems for the Condominium Project, or from locating, operating or maintaining underground wells and necessary operating equipment and conveyance lines near to or upon the property of the Condominium Project.

9.12 Animals. No animals, livestock, birds, reptiles, or poultry of any kind shall be raised, bred or kept in any Unit or upon the Condominium Project, except that (i) one (1) dog, (ii) one (1) to two (2) domestic cats, or (iii) other household pets specifically approved by the Board, may be kept by Owners within a Unit provided such pets are not raised, bred, kept or maintained for any commercial purposes. Notwithstanding the foregoing, no animal or fowl may be kept within a Unit which, in the good faith judgment of the Board, results in an annoyance or is obnoxious to Owners or Occupants within the Condominium Project and the Board may exercise this judgment for specific pets even though others are permitted to remain. The Board may discriminate between Owners and their individual pets when making these decisions, even permitting some pets of a certain breed but prohibiting other pets of the same breed. All animals permitted to be kept by this Section shall be kept on a leash, and all fecal matter shall be immediately cleaned up and properly disposed when on any portion of the Condominium Project. The Board may adopt Association Rules applicable to the provisions of this Section and to the keeping of pets within the Condominium Project, and their enforcement, including the assessment of charges to Owners and Occupants who violate such rules. Any charges so assessed shall be Special Assessments.

9.13 Leases.

9.13.1 The Association may regulate, limit, or prohibit rentals of Residential Units.

9.13.2 The Association may require the rental of any Residential Unit to be conducted through the Association or a designated management company, and may require that all lease agreements be reviewed and approved by the Association or the

management company and that any residential tenants be screened and approved by the Association or the management company prior to renting the Residential Unit. The approval of the Association or management company may not be unreasonably withheld.

9.13.3 Prior to renting any Unit, the Owner and the tenant shall execute a written lease agreement which shall include the following provisions:

(a) The tenant shall agree to comply with all of the terms and conditions of this Declaration, the Bylaws and the Association Rules (current copies of which Owner shall provide to tenant and tenant shall acknowledge as having received and reviewed);

(b) The tenant shall agree not to allow or commit any nuisance, waste, unlawful or illegal act upon the Unit or the Condominium Project; and,

(c) The Owner and the tenant shall acknowledge that the Association is an intended third party beneficiary of the lease agreement, that the Association shall have the right to enforce compliance with this Declaration, the Bylaws and the Association Rules and to abate any nuisance, waste, unlawful or illegal activity upon the premises; and that the Association shall be entitled to exercise all of the owner's rights and remedies under the lease agreement to do so.

9.13.4 Prior to the tenant's occupancy of a Unit, the Owner must provide to the Association the name, address and telephone number of the tenant and a copy of the written lease agreement.

9.13.5 The Association shall have the right and the obligation to enforce compliance with this Declaration, the Bylaws and the Association Rules against any Owner and/or occupant of any Unit, and shall have all rights and remedies available under state or local law, in addition to its rights and remedies as a third party beneficiary under any lease agreement, to enforce such compliance.

9.13.6 In addition to and without varying any of the foregoing provisions, every lease shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Association Rules. Said lease shall further provide that any failure by the Occupant thereunder to comply with the terms of the foregoing documents shall be a default under the lease. If any lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the lease and binding on the Owner and Occupant by virtue of their inclusion in this Declaration. No Owner shall be permitted to lease his or her Unit for transient or hotel purposes, which shall be defined as rental for any period of less than twelve (12) months. No Owner may lease less than his or her entire Unit. Failure by an Owner to take legal action, including the institution of a forcible entry and detainer proceeding against his or her Occupant who is in violation of this Declaration, the Bylaws or the Association Rules within ten (10) days after receipt

of written demand to do so from the Board, shall entitle the Association, through the Board, to take any and all such action it deems necessary including the institution of proceedings in forcible entry and detainer on behalf of such Owner against his or her Occupant. Neither the Association, the management company nor any agent retained by the Association to manage the Condominium Project shall be liable to the Owner or Occupant for any eviction under this Section that is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefore shall entitle the Board to levy a Special Assessment against such Owner and his or her Unit for all such expenses incurred by the Association. In the event such Special Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies of the Association for the collection thereof. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

- 9.14 Landscape Maintenance. Declarant and the Association shall have the right to maintain all landscaping in the Common Areas and Facilities and Limited Areas and Facilities as specified in Article 4 thereof. Declarant and the Association shall have the right of access to all areas of the Condominium Project that are necessary for such landscape maintenance.
- 9.15 Floor Load. There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the area of the heavy use is approved in writing by the Association.
- 9.16 Commercial Units. Each Owner of a Commercial Unit may conduct any commercial or retail business in the Commercial Units between the hours of 7:00 A.M. and 11:00 P.M., provided such business use conforms with all laws, ordinances and codes, is validly licensed and does not require more than one (1) parking space per 1,000 square feet (unless the Owner has obtained enough off-site parking from other third parties throughout the duration of such use sufficient to meet any zoning and licensing requirements of Salt Lake City and otherwise not negatively impact the Condominium Project). Notwithstanding anything else contained in this Declaration, the Commercial Units shall not display, exhibit, store, generate, offer for sale or be used for a residence, multi-family purpose, hotel, motel, hostel, massage parlor, tattoo shop, check cashing business, pawn shop, lewd or pornographic images or medium, sex trade services, graphic violence, video game or penny arcade, billiard or pool hall, hazardous substances, alcohol or alcoholic beverages, gambling, casino gaming, pari-mutuel betting, drug paraphernalia or other dispenser of illegal substances. Each Owner of a Commercial Unit shall pay the reasonable costs of any legal fees that the Board incurs in connection with its enforcement of the use restrictions contained herein. In addition, each Owner of a Commercial Unit shall defend, indemnify and hold harmless Declarant, the Board, the Association and their respective members, shareholders, owners, managers, agents and assigns from any and all causes of action, demands,

charges or other claims arising out of or related to such Owner's use of its Commercial Unit or conduct of its business in such Commercial Unit.

- 9.17 Single Family Occupancy. The use of each Residential Unit is restricted to single family occupancy and accessory uses as permitted herein for a period of thirty (30) years from the date of this Declaration; provided, however, that any Residential Unit also may be owned and/or used by a business entity or for business use for the limited purpose of hosting business meetings, hosting receptions or allowing complementary suite use as an incentive for employees, clients and similar marketing purposes that do not violate the noise or other restrictions contained in this Declaration (although no short term rentals of the Units shall in any way be permitted), maintaining a personal professional library in a Residential Unit, keeping his or her personal business records or accounts therein, handling his or her personal business or professional calls or correspondence therefrom, or engaging in other business activities that do not involve customers, clients or suppliers coming to the Condominium Project and that are not otherwise prohibited by applicable laws, ordinances or regulations. Except for (i) those activities conducted as part of the marketing and development program for the Condominium Project by Declarant, (ii) the business Owner's hosting, reception and complementary uses described in the preceding sentence, and (iii) home professional pursuits without employees, public visits, or nonresidential storage and mail as outlined in this Section 9.17, no industry, business, trade, commercial activities or other use of the Residential Unit, shall be conducted, maintained, or permitted in any part of a Residential Unit, nor shall any Residential Unit or Commercial Unit be used or rented for transient, hotel, or motel purposes. Single family occupancy is defined as a single housekeeping unit, operated on a nonprofit, noncommercial basis between its occupants, cooking and eating with a common kitchen and dining area, where all residents are members of a family related by blood, adoption, or marriage, except for not more than two (2) additional persons not so related may reside in a Residential Unit.
- 9.18 Subdivision of Units or Further Restrictions. Except for the Commercial Units which may be subdivided by Declarant or by any subsequent Owner of the Commercial Units without the consent or permission of the Board, the Association or any other Owner, no Residential Unit shall be split, subdivided, or separated into two or more Units, and no Owner of a Residential Unit shall sell or lease less than all of the Unit. An owner of two (2) or more adjacent Units may, however, combine those units to make a single Unit and then separate the single Unit into the original Units for purposes of selling one or more of the Units; provided however, that no such combination or subsequent separation shall be allowed until the Board has approved such combination or separation. Except for Commercial Units, no subdivision plat or further covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Board has first approved the plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be absolutely null and void. The Board's review shall be for the purpose of assuring, in the sole and absolute discretion of the Board, that the plat or



covenants, conditions, and restrictions are consistent and compatible with the overall plan of development of the Property. However, in no event shall the approval of the Board of any plat or covenant, condition, or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenant, conditions, or restriction.

- 9.19 Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or any committee established by the Board for that purpose except any signage or window coverings of the Commercial Units described in Sections 9.1 and 9.6 and the addition of any exterior doors to the Commercial Units. By way of illustration but not of limitation the following are considered exterior changes: painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work which in any way alters the exterior appearance of the Property. The Board, or committee established by the Board for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Board. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board, or any committee established by the Board for that purpose. By way of illustration but not of limitation the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.
- 9.20 No Smoking. No smoking or burning of materials that produce smoke shall be allowed, including without limitation the smoking or burning of cigarettes, cigars, pipes, incense, charcoal, food, or any other burning item that produces smoke, except in special Common Areas, if any, designated by the Association for smoking tobacco products.
- 9.21 Lighting. Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board.
- 9.22 Association Rules. The Association shall have the power to make and adopt, amend and replace reasonable Association Rules with respect to activities that may be conducted on any part of the Condominium Project. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate such Association Rules shall be conclusive unless, at a regular or special meeting of the Association, Owners representing a majority of the Allocated Interests in the votes of the Association vote to the contrary.
- 9.23 Variances. The Board, at its option and in the face of proven, extenuating circumstances, may in its sole discretion grant variances from the Restrictions set forth in Article 9 of this Declaration if the Board determines in its sole discretion (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete and (b) that the activity permitted under the variance

will not have any substantial adverse effect on the Owners or Occupants of the Condominium Project and is consistent with the high quality of life intended for residents and users of the Condominium Project.

- 9.24 Doors to Mechanical Rooms. Certain Units contain mechanical rooms that open to the outside balconies of those Units. The mechanical rooms contain water heaters, heat exchangers, electrical panels and other equipment that service those respective Units as well as sprinklers and sprinkler lines to reduce fire hazard risk (hereinafter collectively referred to as the “***Mechanical Room Equipment***”). Since the mechanical rooms open to the outside balconies, the Mechanical Room Equipment has the potential to be exposed to outside temperatures and weather including rain, snow, sleet, hail and other elements. In order to reduce the risk of damage to the Mechanical Room Equipment, Owners whose mechanical rooms open to the outside balconies of their Units shall keep the doors to their respective mechanical rooms closed at all times except when actively conducting service and maintenance on the Mechanical Room Equipment to prevent freezing of, or other damage to, the Mechanical Room Equipment. Each Owner shall be responsible to pay for any damages or losses to his or her Unit or other Units resulting from the violation of the requirements contained in this Section 9.24.

## ARTICLE 10 INSURANCE

- 10.1 Authority to Purchase. Commencing not later than the date a Unit is conveyed to a Person other than Declarant, the Association shall have the authority to and shall obtain and maintain, to the extent reasonably available, the insurance specified in this Article; provided, however, the Association shall always comply with the insurance requirements of the Act.
- 10.2 Hazard Insurance. To the extent available, the Board shall obtain a master or blanket policy of property insurance on the entire Condominium Project including the Units and the Common Areas and Facilities (excluding land and personal property) insuring the Condominium Project against loss or damage by fire, and other hazards covered by the standard extended coverage endorsement, and against loss or damage by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage not resulting from poor design or workmanship or lack of routine maintenance. Such master policy of property insurance shall be in a total amount of insurance equal to the greater of (i) 80% of the actual cash value of the insured property at the time insurance is purchased and at each renewal date or (ii) 100% of the current replacement cost, exclusive of land, excavation, foundations and other items normally excluded from such property policies. Such master policy of property insurance shall contain an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement, together with such endorsements as the Association deems appropriate to protect the Association and the Owners.
- 10.3 Comprehensive Public Liability Insurance. To the extent available, the Association shall obtain comprehensive general liability insurance insuring the Association, the Declarant, the agents and employees of the Association and the Declarant, the Owners and

Occupants and the respective family members, guests and invitees of the Owners and Occupants, against liability incident to the use, ownership, or maintenance of the Common Areas and Facilities or membership in the Association. The limits of such Insurance shall not be less than \$2,000,000.00 (and may in subsequent years be increased by the Association to account for inflation and rising liability costs) covering all claims for death of or injury to any one person and/or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage that would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner or Occupant. Such Insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles, and liability for the property of others. Such Insurance must provide that, despite any provisions giving the carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the approval of the Association. The Board shall adjust the amount of the insurance carried under this Section from time to time.

- 10.4 Workmen's Compensation Insurance. The Board shall purchase and maintain in effect workman's compensation insurance for all employees of the Association to the extent that such insurance is required by law.
- 10.5 Fidelity Insurance. The Board shall obtain fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible for handling funds of the Association. Such fidelity bonds shall name the Association as obligee and shall be written in an amount equal to one hundred fifty percent (150%) of the estimated current annual Common Expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.
- 10.6 Premiums. Premiums upon insurance policies purchased by the Board on behalf of the Association shall be paid by the Association as part of the Common Expenses.
- 10.7 Policy Provisions.
- 10.7.1 Any insurer that has issued an insurance policy to the Association under this Article shall also issue a certificate or memoranda of insurance to the Association and upon request, to any Owner or Lender.
- 10.7.2 The named insured under any policy of insurance shall be the Association, as trustee for the owners, or its authorized representative, including any trustee with which the Association may enter into any Insurance Trust Agreement, or any successor trustee each of which shall be referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under the policies. The policy shall provide that each Owner shall be an insured person under the policy with respect to liability arising out of his or her interest in the Common Areas and Facilities or membership in the Association. Each Owner hereby appoints the

Association, or any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining insurance required by this Article, and adjustment of all losses related thereto, including: the collection and appropriate disposition of all insurance proceeds, the negotiation of all losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to administer such insurance. The Association shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their Lenders, as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

- 10.7.3 The Association's Insurance shall contain the "Special Condominium Endorsement" or its equivalent. Insurance coverage obtained by the Association shall be primary insurance and may not be brought into contribution with Insurance purchased by the Owners.
- 10.7.4 Coverage must not be limited by (i) any act or neglect by Owners or Occupants which is not within control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Condominium Project over which the Association has no control.
- 10.7.5 Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) and the Insurer may not refuse to renew the policy without at least thirty (30) days prior written notice to the Association and all Lenders, and to any owner to whom a certificate has been Issued.
- 10.7.6 All policies must contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Association, Owners, Occupants and their respective agents and employees, and any defenses based on co-insurance or on invalidity arising from acts of the insured.
- 10.8 Supplemental Insurance. The Board may obtain such other policies of insurance in the name of the Association as the Board deems appropriate to protect the Association and Owners. The Board shall obtain director's and officer's liability insurance for officers and directors of the Association in accordance with the Articles. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or Owner of a Unit, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.
- 10.9 Annual Insurance Report. Not later than sixty (60) days prior to the beginning of each fiscal year, the Board may obtain a written report by a reputable independent insurance broker or consultant setting forth the existing insurance obtained pursuant to this Article

and stating whether, in the opinion of such broker or consultant, the Insurance complies with the requirements of this Article and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Board shall be fully protected in relying on the written report furnished pursuant to this Section provided reasonable care and prudence were exercised in selecting such independent insurance broker or consultant.

- 10.10 Insurance Obtained by Owners. Notwithstanding the above, and pursuant to Section 57-8-29 of the Act, an Owner or Occupant shall be permitted to insure his own Unit for his own benefit.

## **ARTICLE 11** **DESTRUCTION OF IMPROVEMENTS**

- 11.1 Reconstruction by the Board. In the event of partial or total destruction of a building or buildings or any portion of the Common Areas and Facilities within the Condominium Project, the Board shall promptly take the following action:

(a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds;

(b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Condominium Project.

(c) Pursuant to Section 57-8-30 of the Act, if the Insurance proceeds are sufficient to reconstruct the building, said proceeds shall be applied to such reconstruction.

(d) If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and/or a Special Assessment equal to twenty-five percent (25%) or less of the then aggregate annual regular Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders encumbering Units within the Condominium Project setting forth such findings and informing said Owners and Lenders that the Board intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests in the votes of the Association object in writing to such reconstruction as indicated in such notice, the Board shall call a special meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy a uniform Special Assessment against each

Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

(e) If the Board in good faith determines that none of the bids submitted under this Section reasonably reflects the anticipated reconstruction costs, the Board shall continue to attempt to obtain an additional bid which it determines reasonably reflects such costs. Such determination shall be made by the Board as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an Insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 11.2.

(f) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, Assessments may abate against the Owner thereof until the Board determines that habitability has been restored. However, if the management, maintenance and operation of the Condominium Project necessitates otherwise, it may elect to disallow such abatement.

- 11.2 Reconstruction by Vote. If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after same has been determined the Board shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners by a vote at such meeting or by the written consent of not less than eighty percent (80%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area and Facility which will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Board shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
- 11.3 Procedure for Minor Reconstruction. If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Condominium Project in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes, or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.
- 11.4 Procedure for Major Reconstruction. If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, all Insurance proceeds, together with such amounts from available reserves or Special Assessments as are needed to complete the cost of

reconstruction, shall be paid directly to a bank or savings and loan association located in Salt Lake County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or the successor to either agency, as designated by the Board, as trustee (hereinafter called the "Insurance Trustee") for all Owners and Lenders. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board. Disbursement of such funds shall be made only upon the signatures of two members of the Board and upon the terms and conditions provided in this Section. As soon as practicable after notification of the receipt of Insurance proceeds by the Insurance Trustee, the Board shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Areas and Facilities according to the original plan and specifications of said improvements or, if the Board determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes, or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors of a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Salt Lake County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board shall furnish to the Board before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board. The Board may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

- 11.5 Determination Not to Reconstruct Without Termination. If Owners of not less than eighty percent (80%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area and Facility which will not be rebuilt after a casualty) vote not to rebuild and the entire Condominium Project is not repaired or replaced, and the Condominium Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.
- 11.6 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed

building or any other portion of the Common Areas and Facilities, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area and Facilities. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

- 11.7 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner or that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.
- 11.8 Priority. Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering his Unit as to any portion of insurance proceeds allocated to such Unit.

## **ARTICLE 12** **EMINENT DOMAIN**

- 12.1 Total Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must and shall be deemed to compensate the Owner for his Unit and Allocated Interest in the Common Areas and Facilities, regardless of whether any Common Areas and Facilities are taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Areas and Facilities shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute, and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Area and Facility.
- 12.2 Partial Taking of a Unit. Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must and shall be deemed to compensate the Owner for the reduction in the value of his Unit and Allocated Interest in the Common Areas and Facilities, regardless of whether any Common Areas and Facilities are taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Areas and Facilities shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.
- 12.3 Taking of a Limited Common Area and Facility. If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes



any Limited Common Area and Facility or portion thereof, the portion of the award attributable to the Limited Common Area and Facility so taken shall be divided among the Owners of the Units to which such Limited Common Area and Facility was allocated at the time of the acquisition.

- 12.4 Taking of the Common Areas and Facilities. If the portion of Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of, or include, any Unit or Limited Common Area and Facility, the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Condominium Project so taken, and the portion of the award not used for restoration shall be divided among the Owners in proportion to their Allocated Interest in the Common Areas and Facilities before the taking.
- 12.5 Taking of Entire Condominium Project. In the event the Condominium Project in its entirety is taken by eminent domain, or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.
- 12.6 Priority and Power of Attorney. Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering his Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Areas and Facilities, or any part thereof. In the event the taking involves all or part of any Unit or the Common Areas and Facilities or Limited Common Areas and Facilities, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

### **ARTICLE 13** **RIGHTS OF LENDERS**

- 13.1 Notices to Lenders. A Lender shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Lenders for notice, approval or consent regarding a proposed action or otherwise, unless and until such Lender, or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Condominium Project and setting forth the information described in Section 13.6. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section a Lender must also make such request in writing delivered to the Association. Except as provided in this Section, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association.

- 13.2 Priority of Lenders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of said Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.
- 13.3 Relationship with Assessment Liens.
- 13.3.1 The lien provided for in Article 6 for the payment of Assessments shall be subordinate to the lien of any Lender which was recorded prior to the date any such Assessment becomes due.
- 13.3.2 If any Unit which is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest in a Unit pursuant to such foreclosure of the Lender's lien shall take title free of any lien created by this Declaration for any Assessments which accrued after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.
- 13.3.3 Without limiting the provisions of Subsection 13.3.2 of this Section 13.3, any Lender who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.
- 13.3.4 Nothing in this Section shall be construed as releasing any Person from his personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.
- 13.4. Required Lender Approval. Except upon the prior written approval of a majority of all Lenders which have provided notice to the Association as described in Section 13.1 and Section 13.6, based on one vote for each Unit encumbered by a loan, neither the Association nor the Board shall be entitled by action or inaction to do any of the following:
- (a) Abandon or terminate by any act or omission the legal status of the Condominium Project, except for abandonment or termination provided by the Act and/or this

Declaration in the case of substantial destruction by fire or other casualty or in the case of a taking by eminent domain; or

(b) Except as specifically provided by or in this Declaration, amend any provisions governing the following:

- (i) voting rights;
- (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;
- (iii) reductions in reserves for maintenance, repair and replacement of Common Areas and Facilities;
- (iv) reallocation of interests in the Common Areas and Facilities Limited Common Areas and Facilities;
- (v) redefinition of any Unit boundaries;
- (vi) convertibility of Units into Common Areas and Facilities or vice versa;
- (vii) hazard or fidelity insurance requirements;
- (viii) imposition of any restrictions on the leasing of Units;
- (ix) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
- (x) restoration or repair of the Condominium Project (after damage or partial condemnation) in a manner other than that specified in the Declaration, Articles of Incorporation or Bylaws, or
- (xi) any provision that expressly benefits Lenders (including their Insurers or guarantors).

Any Lender who receives, by certified or registered mail, a written request, with a return receipt requested, to approve a change and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

13.5 Other Rights of Lenders. Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled:

- (a) To inspect current copies of this Declaration (and any amendments), the Association's Articles, Bylaws, Association Rules, and other books and records of the Association during normal business hours; and
  - (b) To receive an audited annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year if the Association has previously prepared such audited financial statements.
- 13.6 Notices of Action. Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:
- (a) Any condemnation or casualty loss which affects a material portion of the Condominium Project or any Unit on which there is a first lien held by such Lender;
  - (b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to the lien of a Lender, which remains uncured for a period of sixty (60) days;
  - (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
  - (d) Any proposed action by the Owners or the Association that would amount to a material change in the Declaration as identified in Section 13.4 hereof.

**ARTICLE 14**  
**LIMITATIONS UPON PARTITION AND SEVERANCE**

- 14.1 No Partition. The right to partition the Condominium Project is hereby suspended, except that the right to partition shall revive and the Condominium Project may be sold as a whole when the conditions for such action set forth in Article 11 dealing with Destruction of Improvements, and Article 12 dealing with Eminent Domain have been met; provided, however, nothing contained in this Section shall be construed as limiting partition by joint Owners, upon the prior written approval of an applicable Lender, of one or more Units as to individual ownership of such Units provided the Condominium Project is not terminated.
- 14.2 No Severance. The elements of a Unit and other rights appurtenant to the ownership of a Unit, including interest in Common Areas and Facilities and Limited Common Areas and Facilities, if any, are inseparable, and each Owner agrees that he or she shall not, while this Declaration is in effect, make any conveyance of less than an entire Unit and such appurtenances, provided, however, that the Owners of the Commercial Units may convey all or any portion of those units after they have been subdivided. Any conveyance made in contravention of this Section, including under any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) shall be void.

- 14.3 Proceeds of Partition Sale. If an action is brought for the partition of the Condominium Project by sale, whether upon the occurrence of an event of destruction and a decision not to reconstruct or the taking of all or a portion of the Condominium Project by eminent domain, Owners shall share in the proceeds of such sale in the same proportion as their Allocated Interest in the Common Areas and Facilities (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Condominium Project shall extend to each applicable Owner's interest in the proceeds of such partition and sale. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

**ARTICLE 15**  
**AMENDMENTS**

- 15.1 Amendments by Declarant Prior to First Sale. Except as provided elsewhere in this Declaration, prior to the conveyance of the first Unit to an Owner other than a Declarant, this Declaration and any amendments thereto may be amended or revoked by the execution by Declarant of an instrument amending or revoking the same.
- 15.2 Amendments by Declarant After First Sale. Except as provided elsewhere in this Declaration, Declarant (without obtaining the approval of Owners, the Association, or existing Lenders) may unilaterally amend or modify this Declaration in the exercise of its rights set forth in this Declaration, including without limitation the Supplemental Declarant Rights. Also, notwithstanding anything herein to the contrary, Declarant shall have the unilateral right (without obtaining the approval of the Owners, the Association, or existing Lenders) to amend this Declaration until the Turnover Date, if such amendment is required solely: (i) to comply with applicable law or to correct any error or inconsistency of the Declaration and if such amendment does not adversely affect the rights of any Owner or Lender, or (ii) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without limitation, the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or any similar agency). If such amendment bears recitation that it is recorded based on such technical error or the requirements of any of the foregoing agencies, such amendment shall not require approval of any Owners or Lenders.
- 15.3 General Amendment Requirements. Except as permitted by Section 15.1, Section 15.2, or as otherwise permitted or required by the Act, this Declaration may be amended only by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Prior to the Turnover Date, this Declaration shall not be amended without Declarant's prior written consent.

- 15.4 Protection of Declarant Rights. An amendment shall not terminate or decrease any unexpired Development Right, Special Declarant Right, or period of Declarant control unless the Declarant approves or consents to the same in writing.
- 15.5 Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Salt Lake County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved and the Declarant if the Declarant's consent is also required, and when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.
- 15.6 Lender Approval. Subject to the foregoing, any provision of this Declaration which expressly requires the approval of a specified percentage of the Lenders for action to be taken under said provision can be amended only with the affirmative written assent or vote of not less than the same percentage of the Lenders; provided that in the event approval is requested in writing from a Lender with respect to a proposed amendment and a negative response is not returned within thirty (30) days following the Lender's receipt of the request, by certified or registered mail, with a return receipt requested, the Lender shall be deemed to have approved the proposed amendment.

**ARTICLE 16**  
**GENERAL PROVISIONS**

- 16.1 Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association, Declarant, or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and Association Rules and any respective amendments thereto. In addition to the other powers of the Association and Board set forth herein, the Board shall have the power to levy fines against Owners for violations of this Declaration, which fines shall be deemed a special assessment secured by a lien on such Unit. In addition to the rights, powers and remedies expressly granted under this Declaration, the Board may assess a fine of \$100.00 for the first violation of this Declaration, a fine of \$300.00 for the second violation of the same provision of this Declaration, and a fine of \$1,000.00 for any additional violation of the same provision of this Declaration thereafter. Owners hereby agree and acknowledge that it is necessary to ensure the enforcement of this Declaration to preserve the value of the Units, that it may be impossible to calculate with specificity the decrease in the value of the Units caused by violations of this Declaration, and that the fines set forth herein are a reasonable approximation of such damages to the extent specific damages cannot be calculated.

- 16.2 No Waiver. Failure by the Association, Declarant, or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 16.3 Cumulative Remedies. In addition to the rights, powers and remedies expressly granted under this Declaration, the Association shall have the right to seek its monetary damages and equitable remedies (including, without limitation, specific performance) in the event of any Owner's default of its obligations or responsibilities arising as the Owner of a Unit. All rights, options and remedies of Declarant, the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.
- 16.4 Severability. In case any one or more of the provisions set forth in this Declaration or in the Bylaws or Association Rules shall, for any reason, be held by judgment or court order to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision(s) of this Declaration, the Bylaws or the Association Rules, as applicable, which shall remain in full force and effect (to the maximum extent permitted by applicable law), and such affected provision shall be construed, narrowed or eliminated only to the extent necessary to remove any such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied.
- 16.5 Covenants To Run with the Land: Term. The Restrictions and other provisions of this Declaration shall run with and bind the Condominium Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the Restrictions and other provisions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed and acknowledged by Owners of not less than seventy-five (75%) of the Allocated Interests in the votes of the Association and their Lenders, has been recorded prior to the end of any such period agreeing to change or revoke the Restrictions and other provisions of this Declaration in whole or in part.
- 16.6 Allocation Upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Condominium Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, who will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination

or liquidation in the same proportion as their Allocated Interest in the Common Areas and Facilities (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Condominium Project so encumbered shall extend to each applicable Owner's Interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

- 16.7 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community, the Residential Units, and the Commercial Units and for the maintenance of the Condominium Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.
- 16.8 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or Association Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.
- 16.10 Attorneys' Fees. In the event any action is instituted to enforce any of the provisions contained in this Declaration, the Bylaws or Association Rules, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and costs of suit.
- 16.11 Notices. Any notice to be given to an Owner, a Lender or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:
- 16.11.1 Notice to an Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners.
- 16.11.2 Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the



Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender in Salt Lake County, Utah, or if no such office is located in Salt Lake County, to any office of such Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

- 16.11.3 The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to any Lender or Lenders, to the address or addresses for the giving of notice pursuant to this Section, shall be deemed conclusive proof of such mailing.
- 16.11.4 Notice to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to the office of the statutory agent of the Association or as follows:

WESTGATE LOFTS CONDOMINIUM ASSOCIATION  
Attention: Attorney Sean Monson  
3165 East Millrock Dr.  
Suite 500  
Salt Lake City, Utah 84121

Any notice so deposited in the mail shall be deemed delivered upon the date of receipt.

- 16.12 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or Association Rules are determined to be unenforceable in whole or in part or under certain circumstances.
- 16.13 Personal Covenant. To the extent the acceptance of a conveyance of a unit creates a personal covenant between the Owner of such Unit and Declarant, other Owners or the Association, such personal covenant shall terminate and be of no further force or effect from and after the date when a Person ceases to be an Owner except to the extent this Declaration provides for personal liability with respect to the Assessments incurred during the period a Person is an Owner.
- 16.14 Nonliability of Officials. To the fullest extent permitted by law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence if such Board member or officer acted in good faith within the scope of his or their duties.

- 16.15 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for non-profit purposes of the Association in managing, maintaining, caring for and preserving the Common Areas and Facilities and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Areas and Facilities and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 16.16 Notification of Sale and Transfer Fee. Concurrently with the consummation of the sale or other transfer of any Unit, or within seven (7) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with any nonrefundable transfer fee payable pursuant to the Association Rules, to cover Association documentation and processing. The Board may establish a transfer fee, from time to time, which shall be no more than the amount of the then current regular monthly assessment. The written notice shall set forth the name of the transferee and his transferor, the street address of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Owner and shall be secured by the lien described in Section 6.1 hereof. Notwithstanding the other provisions hereof, this Section shall not apply to a Lender who becomes an Owner by a foreclosure proceeding or any deed or assignment in lieu of foreclosure.
- 16.17 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Areas and Facilities that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including any Limited Common Areas and Facilities, if any, except to the extent (a) that such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other person temporarily visiting such Unit.
- 16.18 Conflicting Provisions. In the case of any conflict between this Declaration and the Bylaws, or Association Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow the Declaration to contain provisions contrary to the Act, the Act shall control and this

Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified and amended only to the extent necessary to come into compliance with the Act.

16.19 WAIVER OF RIGHT TO JURY TRIAL; Mediation; Limitation on Liability and Remedies. THE OWNERS, THE BOARD, THE ASSOCIATION AND DECLARANT, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, HAVING HAD THE OPPORTUNITY TO CONSULT WITH COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE OBLIGATIONS OR ANY CONDUCT, ACT OR OMISSION OF ANY OF THEM, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH THE OWNERS, THE BOARD, THE ASSOCIATION OR DECLARANT, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. In addition, the Owners, Board, Association, and Declarant hereby agree that before initiating or prosecuting any action, litigation or arbitration claiming any negligence, intentional misconduct or fault on behalf of Declarant and/or Declarant's owners, directors, officers, employees, agents, attorneys, representatives and contractors with respect to the design, materials, renovation and construction of the Condominium Project, the parties shall mediate their claims in good faith before a mediator who is a member of the Utah Bar. If the parties are unable to agree upon a mediator, the Declarant shall submit a list of five (5) mediators to the plaintiff, and the plaintiff shall select a mediator from that list. In any action claiming any negligence, intentional misconduct or fault on behalf of Declarant and/or Declarant's owners, directors, officers, employees, agents, attorneys, representatives and contractors with respect to the design, materials, renovation and construction of the Condominium Project, the sole and exclusive remedy of the Board and Association shall be a court order requiring Declarant and/or its contractors to reasonably repair material problems with respect to the design, materials, renovation and construction of the Condominium Project to the extent such problems were caused by negligence, intentional misconduct or fault on behalf of Declarant and/or Declarant's owners, directors, officers, employees, agents, attorneys, representatives and contractors. Under no circumstances shall Declarant and/or its contractors be liable for, and the Owners, Board, and Association hereby waive and shall have no right to, monetary damages of any kind, including without limitation direct or indirect damages, consequential damages, special damages, or punitive damages.

16.20 Waiver of Right To Sue or Obstruct Future Development. In addition to the Property, Declarant or Declarant's Affiliates presently own or shall own certain substantial real property and improvements adjacent to or located near and/or on the same city block as the Property and the Condominium Project (the "Related Property"). In connection with the development of the Condominium Project, Declarant and/or Declarant's Affiliates hereby notify any and all prospective Owners of their intentions, plans and commitments to also develop, construct, excavate, remodel, renovate, modify, own, rent and/or sell the Related Property for commercial, residential and other purposes with the resulting dust, noise, construction hassle, change in skyline, inconvenience and other effects that accompany such work. Each Owner upon its purchase of a Unit agrees, acknowledges and

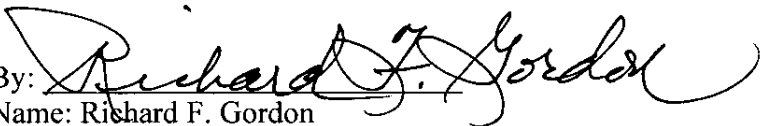
consents to any and all such development of the Related Property by Declarant, Declarant's Affiliates or Assigns of either and hereby releases, surrenders, terminates and waives any and all rights, titles, claims, interests and objections that it may have or make against Declarant, Declarant's Affiliates or Assigns of either arising therefrom or related thereto or for liabilities, damages or injunctions against the same or to prevent, delay, stop, impede or otherwise hinder such development by Declarant or Declarant's Affiliates.

16.21 Force Majeure. Declarant and the Association shall be excused for the period of any delay in the performance of any obligations under this Declaration when prevented from so doing by any cause or causes beyond Declarant's or the Association's reasonable control, including, without limitation, labor disputes, strikes, civil commotion, war, terrorist acts, governmental regulations or controls, earthquakes, reasonably unforeseen acts or conditions of nature or weather, or acts of God.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this 19<sup>20</sup> day of September, 2008.

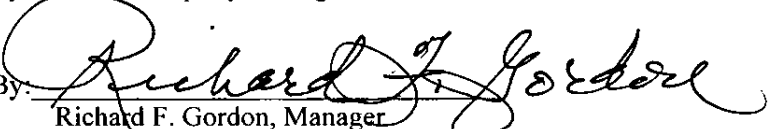
DECLARANT:

WESTGATE LOFTS, INC.,  
a Utah corporation

By:   
Name: Richard F. Gordon  
Its: President

WEST SIDE PROPERTY ASSOCIATES, L.P., a Utah  
limited partnership

By: National Property Management, LC

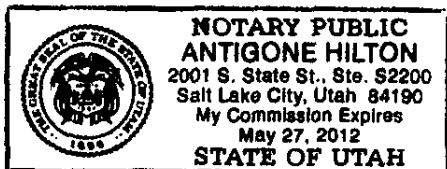
By:   
Richard F. Gordon, Manager

STATE OF UTAH                    }  
  } ss.  
COUNTY OF SALT LAKE        }

The foregoing instrument was acknowledged before me this 19 day of September, 2008, by Richard F. Gordon, in his capacities as (i) the President of Westgate Lofts, Inc. and (ii) the

Manager of National Property Management, LC, which is the General Partner of West Side Property Associates, L.P.

*Antigone Hilton*  
\_\_\_\_\_  
Notary Public



**STATEMENT OF ALLOCATED  
INTERESTS**

**Building 328 West 200 South**

<u>Unit #</u>	<b>Building 328 Square Footage Per Unit</b>	<b>% of Bldg.</b>	<b>% of Combined</b>	<b>% of Combined</b>
		<b>Phase 1 (Building 328)</b>	<b>Phases 1 &amp; 2 (Buildings 328 and 342)</b>	<b>Phases 1, 2 &amp; 3 (Buildings 328, 342, and 320)</b>
100	1,615	0.0257157	0.0193785	0.0150449
102	1,200	0.0191077	0.0143988	0.0111789
103	1,008	0.0160504	0.0120950	0.0093903
104	916	0.0145855	0.0109911	0.0085332
105	918	0.0146174	0.0110151	0.0085519
106	1,170	0.01863	0.0140388	0.0108994
107	830	0.0132161	0.0099592	0.0077321
201	928	0.0147766	0.0111351	0.0086450
202	893	0.0142193	0.0107151	0.0083110
203	1,051	0.0167351	0.0126110	0.0018911
204	842	0.0134072	0.0101032	0.0078439
205	875	0.0139327	0.0104992	0.0081513
206	870	0.0138531	0.0104392	0.0081047
207	800	0.0127384	0.0095992	0.0074526
208	1,023	0.0162893	0.0122750	0.0095300
209	909	0.0144741	0.0109071	0.0084680
210	954	0.0151906	0.0114471	0.0088872
301	928	0.0147766	0.0111351	0.0086450
302	893	0.0142193	0.0107151	0.0083110
303	1,051	0.0167351	0.0126110	0.0018911
304	842	0.0134072	0.0101032	0.0078439
305	875	0.0139327	0.0104997	0.0081513
306	870	0.0138531	0.0104392	0.0081047
307	800	0.0127384	0.0095992	0.0074526
308	1,023	0.0162893	0.0122750	0.0095300
309	909	0.0144741	0.0109071	0.0084680
310	954	0.0151906	0.0114479	0.0088872
401	928	0.0147766	0.0111351	0.0086450
402	893	0.0142193	0.0107151	0.0083110
403	1,051	0.0167351	0.0126110	0.0018911
404	842	0.0134072	0.0101032	0.0078437
405	875	0.0139327	0.0104992	0.0081513
406	870	0.0138531	0.0104392	0.0081047
407	800	0.0127384	0.0095992	0.0074526
408	1,023	0.0162893	0.0122750	0.0095300
409	909	0.0144741	0.0109071	0.0084680
410	954	0.0151906	0.0114471	0.0088872
501	928	0.0147766	0.0111351	0.0086450
502	893	0.0142193	0.0107151	0.0083110
503	1,051	0.0167351	0.0126110	0.0018911
504	842	0.0134072	0.0101032	0.0078439
505	875	0.0139327	0.0104992	0.0081513
506	870	0.0138531	0.0104392	0.0081047
507	800	0.0127384	0.0095992	0.0074526
508	1,023	0.0162893	0.0122750	0.0095300

<b>509</b>	909	0.0144741	0.0109071	0.0084680
<b>510</b>	954	0.0151906	0.0114471	0.0088872
<b>601</b>	2,215	0.0352696	0.0265779	0.0206344
<b>602</b>	1,862	0.0296487	0.0223422	0.0173459
<b>603</b>	2,227	0.0354607	0.0267219	0.0207462
<b>604</b>	2,020	0.0321646	0.0242380	0.0188178
<b>605</b>	1,789	0.0284864	0.0214663	0.0166659
<b>606</b>	2,205	0.0351103	0.0264579	0.0205412
<b>607</b>	1,873	0.0298239	0.0224742	0.0174484
<b>608</b>	1,861	0.0296328	0.0223302	0.0173366
<b>609</b>	2,513	0.0400146	0.0301539	0.0234105
<hr/>				
<b>Grand Total</b>		<b>100%</b>	<b>0.7535651</b>	<b>0.5534166</b>
<hr/>				
<b>Square Footage</b>	<b>62,802</b>		<b>83,340</b>	<b>107,345</b>
<hr/>				

**STATEMENT OF ALLOCATED INTERESTS**

**Building 342 West 200 South**

<b>Unit #</b>	<b>Building 342 Square Footage Per Unit</b>	<b>% of Combined Phases 1 &amp; 2 (Buildings 328 &amp; 342)</b>	<b>% of Combined Phases 1, 2 &amp; 3 (Buildings 328, 342 &amp; 320)</b>
101	1,516	0.0181905	0.0141227
102	1,300	0.0155988	0.0121105
103	887	0.0106431	0.0082631
104	1,451	0.0174106	0.0135172
105	1,007	0.0120830	0.0093810
106	1,338	0.0160547	0.0124645
107	799	0.0095872	0.0074433
108	924	0.0110871	0.0086078
109	950	0.0113990	0.0088410
110	1,200	0.0143988	0.0111789
201	1,785	0.0214183	0.0166286
202	1,759	0.0211063	0.0163864
203	1,221	0.0146508	0.0113745
204	1,564	0.0187665	0.0145698
205	702	0.0084233	0.0065397
206	868	0.0104152	0.0080861
207	1,267	0.0152017	0.0118031
<b>Combined Total</b>		<b>.2464349</b>	<b>.1913182</b>
<b>Square Footage</b>	<b>20,538</b>	<b>83,340</b>	<b>107,345</b>



**STATEMENT OF ALLOCATED INTERESTS**  
**Building 320 (Convertible Space)**

<b>Square Footage of Building 320</b>	<b>% of Combined Phase 3 (Buildings 328, 342, 320)</b>
24,005	.2552652

**EXHIBIT A**

**LEGAL DESCRIPTION OF WESTGATE LOFTS PROPERTY**

Beginning at a point South 89°58'33" West 165.08 feet from the Southeast corner of Block 66, Plat "A," Salt Lake Survey, said point being South 89°58'30" West 62.94 feet and North 00°01'30" West 64.43 feet and South 89°58'33" West 165.08 feet from the monument located at the Intersection of Second South Street and Third West Street,

thence South 89°58'33" West 218.32 feet;  
thence North 00°01'33" West 200.04 feet;  
thence North 89°58'27"; East 218.22 feet;  
thence South 00°03'22" East 200.05 feet to the point of beginning.

Contains 43,664 sq. ft. or 1.00 acres

**Westgate Lofts Condominiums**

<b>Unit</b>	<b>Parcel No.</b>	<b>Unit</b>	<b>Parcel No.</b>
100	15-01-132-001	403	15-01-132-030
102	15-01-132-002	404	15-01-132-031
103	15-01-132-003	405	15-01-132-032
104	15-01-132-004	406	15-01-132-033
105	15-01-132-005	407	15-01-132-034
106	15-01-132-006	408	15-01-132-035
107	15-01-132-007	409	15-01-132-036
201	15-01-132-008	410	15-01-132-037
202	15-01-132-009	501	15-01-132-038
203	15-01-132-010	502	15-01-132-039
204	15-01-132-011	503	15-01-132-040
205	15-01-132-012	504	15-01-132-041
206	15-01-132-013	505	15-01-132-042
207	15-01-132-014	506	15-01-132-043
208	15-01-132-015	507	15-01-132-044
209	15-01-132-016	508	15-01-132-045
210	15-01-132-017	509	15-01-132-046
301	15-01-132-018	510	15-01-132-047
302	15-01-132-019	601	15-01-132-048
303	15-01-132-020	602	15-01-132-049
304	15-01-132-021	603	15-01-132-050
305	15-01-132-022	604	15-01-132-051
306	15-01-132-023	605	15-01-132-052
307	15-01-132-024	606	15-01-132-053
308	15-01-132-025	607	15-01-132-054
309	15-01-132-026	608	15-01-132-055
310	15-01-132-027	609	15-01-132-056
401	15-01-132-028	Common Area	15-01-132-057
402	15-01-132-029		

**EXHIBIT B**

**LEGAL DESCRIPTION OF WEST SIDE PROPERTY**

**Parcel 1**

Beginning at a point South 89°58'30" West 62.94 feet and North 00°01'30" West 64.43 feet from the monument located at the Intersection of Second South Street and Third West Street,

thence South 89°58'33" West 165.08 feet;  
thence North 00°03'22" West 200.05 feet;  
thence North 89°58'27" East 165.08 feet;  
thence South 00°03'19" East 200.06 feet to the point of beginning.

Contains 33,024 sq. ft. OR 0.76 acres

**Parcel 2**

Beginning at a point South 89°58'30" West 62.94 feet and North 00°01'30" West 64.43 feet and South 89°58'33" West 383.40 feet from the monument located at the intersection of Second South Street and Third West Street,

thence South 89°58'33" West 176.93 feet;  
thence North 00°03'31" West 178.40 feet;  
thence North 89°58'27" East 165.14 feet;  
thence North 00°03'25" West 21.64 feet;  
thence North 89°58'27" East 11.90 feet;  
thence South 00°01'33" East 200.04 feet to the point of beginning.

Contains 31,830 sq. ft. or 0.73 acres

**EXHIBIT C**

**BYLAWS OF WESTGATE LOFTS CONDOMINIUM ASSOCIATION**

## BYLAWS OF WESTGATE LOFTS CONDOMINIUMS ASSOCIATION

### 1. IDENTITY

These are the Bylaws of Westgate Lofts Condominium Association duly made and provided for in accordance with the Utah Condominium Ownership Act (the "Act") and the Declaration of Condominium and Declaration of Covenants, Conditions and Restrictions for Westgate Lofts Condominiums (the "Declaration"). Any term used herein shall have the same meaning as used in the Declaration

### II. APPLICATION

All present or future Owners, tenants, or any other persons who might use the facilities at the Condominium Project in any manner are subject to the restrictions set forth in these Bylaws. The mere acquisition or rental of any of the Units, or the mere act of occupancy or use of any of said Units or the Common Areas and Facilities within the Condominium Project will signify that these Bylaws are accepted, ratified, and will be complied with by said persons.

### III. ASSOCIATION

1. Members. The members of the Association shall consist of persons owning a Unit at the Condominium Project, in fee simple as shown in the records of the County Recorder of Salt Lake County, Utah, and the Declarant, as more specifically set forth in the Declaration. No mortgagee or a beneficiary or trustee under a deed of trust shall be a member unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The interest of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Member's Unit.

2. Place of Meeting. Meetings of the Association shall be held at such place within the State of Utah as the Board of Directors may specify by written notice as provided in Paragraph 5 below, except as herein otherwise specified.

3. Annual Meetings. The annual meeting of the Association shall be held at 7:00 p.m. on the second Tuesday of October of each year or at such other time and place determined by the Board of Directors; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day, and further provided that the Board of Directors may by resolution fix the date of the annual meeting or such date or at such place as the Board of Directors may deem appropriate.

4. Special Meetings. Special meetings of the Association may be called at any time by the Board of Directors or by Owners who collectively hold at least thirty percent (30%) of the total vote of the Association. Such meeting shall be held at such place as the

Board of Directors may specify and the notice thereof shall state the date, time, location, and matters to be considered.

5. Notices. Written or printed notice stating the place, day and hour of all meetings of the Association and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days before the date of the meeting, either personally or by mail to each Owner. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

6. Quorum. At the meeting of the Association, the Owners of more than fifty percent (50%) of the total interest in the undivided ownership of the Common Areas and Facilities shall constitute a quorum for any and all purposes, except where express provisions of these Bylaws or the Declaration require a vote of more than fifty (50%) percent of the Association, in which event a quorum shall be the percentage of interest required for such vote. In the absence of a quorum, the President of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

7. Voting. When a quorum is present at any meeting, the vote of the Owners representing more than fifty percent (50%) of the undivided interest present at the meeting either in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Board of Directors as provided for in the Declaration, unless the question is one upon which, by express provision of the Declaration or these Bylaws, a greater vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the Secretary at least five (5) days prior to said annual meeting. Proxies for special meetings must be of record with the Secretary at least two (2) days prior to said meeting. An Owner shall be deemed to be in good standing and entitled to vote at any annual or special meeting if, and only if, he or she shall have fully paid all due installments of assessments made or levied against the Owner and the Owner's Unit by the Board of Directors, together with all additional charges, if properly chargeable to the Owner and against the Owner's Unit, at least three (3) days prior to the date fixed for such annual or special meeting.

8. Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, or if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate

automatically upon the adjournment of the first meeting held on or after the date of the proxy. All proxies must be individual Owners or the legal representative of an organizational Owner.

9. Waivers of Notice. Any Owner may at any time waive any notice required to be given under these Bylaws, or by statute or otherwise. The presence of an Owner in person at any meeting of the Owners or Association shall be deemed such waiver.

10. Conduct of Meetings. The President, or in his or her absence, the Vice-President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a Minute Book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

#### IV. BOARD OF DIRECTORS

1. Purposes and Powers. The business, property and affairs of the Association shall be managed and governed by the Board of Directors (the "Board") consisting of a minimum of three (3) and a maximum of five (5) members. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration, and may do all such acts and things as are not by the Act or by these Bylaws directed to be exercised and done by the Association. The Board shall have the power from time to time to adopt any rules and regulations deemed necessary for the enjoyment of the Condominium Project provided such rules and regulations shall not be in conflict with the Act, the Declaration or these Bylaws. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for the following:

- a) Preparation of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;
- b) Making assessments against Owners to defray the costs and expenses of the Condominium Project, establishing the means and methods of collecting such assessments from the Owners, and establishing the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board of Directors, the annual assessment against each Owner for his or her proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;
- c) Providing for the operation, care, upkeep, replacement, maintenance and surveillance of all of the Common Areas and services of the Condominium Project;
- d) Designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Common Areas, and providing services for the Condominium Project, and, where appropriate,

providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners;

e) Collecting the assessments against the Owners, depositing the proceeds thereof in a federally insured bank depository, and using the proceeds to carry out the administration of the Condominium Project;

f) Making and amending administrative rules and regulations from time to time respecting the use of the Property;

g) Opening of any federally insured bank accounts on behalf of the Association and designating the signatories required therefore;

h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Condominium Project and Property and repairs to, and restoration of the Condominium Project and Property, in accordance with the Declaration and other provisions of these Bylaws, after damage or destruction by fire or other casualty;

i) Enforcing by legal means the provisions of the Declaration, Bylaws and any rules and regulations adopted by the Board of Directors from time to time for use of the Condominium Project and the Property, and bringing any proceedings which may be instituted on behalf of the Owners;

j) Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost therefore;

k) Keeping books with detailed accounts of the receipts and expenditures affecting the Property and the administration of the Condominium Project, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon resolution of the Association, shall be audited, reviewed or compiled at least once a year by an outside auditor employed by the Board who shall not be a resident of the Condominium Project or an Owner therein. The cost of such audit, review or compilation shall be a Common Expense. A copy of the annual auditor's report shall be supplied to any first Mortgagee who requests a copy in writing from the Secretary; and



m) To do such other things and acts not inconsistent with the Act, the Declaration or Bylaws or by a resolution of the Association.

2. Composition of Board. Board members of the Association shall be duly elected and removed, and vacancies shall be filled in, the manner provided by the Declaration and Bylaws.

3. Election. The Board shall be elected as provided in the Declaration.

4. Vacancies. Vacancies on the Board shall be filled as provided in the Declaration.

5. Regular Meetings. A regular annual meeting of the Board shall be held immediately after the adjournment of the annual meeting of the Association or at such other time determined by the Board. Regular meetings, other than the annual meeting, shall or may be held at regular intervals at such places and at such times as the Chair or the Board may from time to time designate.

6. Special Meeting. Special meetings of the Board shall be held whenever called by the Chair, Vice-Chair, or by two (2) or more members of the Board. By unanimous consent of the Board, special meetings may be held without call or notice at any time or place.

7. Quorum. A quorum for the transaction of business at any meeting of the Board shall consist of a majority of the members of the Board then in office.

8. Compensation. No compensation shall be paid to the members of the Board for their services as such. No remuneration shall be paid to a member for services performed for the Board in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board before the services are undertaken.

9. Waiver of Notice. Before or at any meeting of the Board, any member thereof, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

10. Action Without Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if authorized by a writing signed by all of the persons who would be entitled to vote upon such action at a meeting, and filed with the Secretary.

11. Adjournments. The Board may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

12. Indemnification. Every Board member and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him or her in connection with any proceeding to which he or she may be a party, or in which he may become involved, by reason of his or her being or having been a Board member or officer of the Association, or any settlement thereof, whether or not he or she is a Board member or officer at the time such expenses are incurred, except in such cases wherein the Board member or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other-rights to which such Board member or officer may be entitled.

13. Report of Board. The Board of Directors shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Condominium Project.

## V. OFFICERS

1. Designation and Election. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board. The Board may appoint an assistant Secretary and an assistant Treasurer and such other officers as in their judgment may be necessary or desirable. Such election or appointment shall regularly take place at the first meeting of the Board immediately following the annual meeting of the Association; provided, however, that elections of officers may be held at any other meeting of the Board.

2. Other Officers. The Board may appoint such other officers, in addition to the officers hereinabove expressly named, as they shall deem necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Board.

3. Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the then members of the Board. A member of the Board removed as an officer remains a member of the Board unless his membership on the Board is also terminated by a majority vote of the owners.

4. President. The President shall be the chief executive of the Association, and shall exercise general supervision over its property and affairs. He or she shall sign on behalf of the Condominium Project all conveyances, mortgages and contracts relating to its business, and shall do and perform all acts and things which the Board may require of him or her. He or she shall preside at all meetings of the Association and the Board. He or she shall have all of the general powers and duties which are normally vested in the office of the President of a corporation, including, but not limited to, the power to appoint

committees from among the members of the Association (or otherwise) from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Condominium Project.

5. Vice President. The Vice President shall take the place of the President and perform his or her duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member thereof to do so on an interim basis. The Vice President shall also perform such other duties, as shall from time to time be prescribed by the Board.

6. Secretary. The Secretary shall keep the minutes of all meetings of the Board and of the Association; he or she shall have charge of the books and papers as the Board may direct; and he or she shall in general perform all the duties incident to the office of Secretary.

7. Treasurer. The Treasurer shall have the responsibility for the funds and securities of the Board and shall be responsible for keeping full and accurate accounts of all receipts of all disbursements in books belonging to the Board. He or she shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Board in such depositories as may from time to time be designated by the Board.

8. Compensation. No compensation shall be paid to the officers for their service as officers. No remuneration shall be paid to an officer for services performed by him or her for the Board in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board before services are undertaken.

9. Agreement, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium Project for expenditures or obligations shall be executed by any two officers of the Board or by such other person or persons as may be designated by the Board except that the President shall be one of the signatories on all conveyances, mortgages and contract.

## VI. ACCOUNTING

1. Books and Accounts. The books and accounts of the Board shall be kept under the direction of the Treasurer and in accordance with the reasonable standards of accounting procedures.

2. Report. At the close of each accounting year, the books and records of the Board shall be reviewed by a person or firm approved by the Owners. A report of such review shall be prepared and submitted to the Owners at or before the annual meeting of the Owners. Provided, however, a certified audit prepared by a certified public accountant approved by the Owners (not an Owner or resident in the Project), shall be made if Owners representing at least seventy-five percent (75%) of the undivided interest in the Common Areas and Facilities determine to require the same or if the Condominium

Project consists of fifty (50) or more Units, then the Association shall make an audited statement for the preceding fiscal year (if the Condominium Project has been established for a full fiscal year) available to the holder, insurer, or guarantor of any first mortgage that is secured by a Unit in the Condominium Project on submission of a written request for it, which audited financial statement shall be available within one hundred twenty (120) days of the Association's fiscal year-end. If the Condominium Project consists of fewer than fifty (50) Units and there is no audited statement available, then any mortgage holder may have an audited statement prepared at its own expense.

3. Inspection of Books. All books and records at the Association shall be available at the principal office of the Board and may be inspected by any Owner, holders, insurers and guarantors of first mortgages that are secured by Units in the Condominium Project, their agent or attorney, for any proper purpose during reasonable business hours.

4. Fiscal Year. The fiscal year of the Association shall consist of the twelve-month period commencing on January 1 of each year and terminating on December 31 of the same year. The fiscal year, herein established, shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

## VII. BUILDING RULES

The Board shall have the power to adopt and establish, by resolution, such building, management, operational and administrative rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Condominium Project and the Property and the Board may from time to time, by resolution, alter, amend, and repeal such rules and regulations. Owners shall at all times obey such rules and regulations and use their best efforts to see that they are faithfully observed by their lessees and the persons over whom they have or may exercise control or supervision, it being clearly understood that such rules and regulations shall apply and be binding upon all Owners and residents of the Condominium Project, their guests and invitees. Provisions of the Act pertaining to rules and regulations are incorporated herein by reference and shall be deemed a part hereof.

## VIII. AMENDMENT OF THE BYLAWS

These Bylaws may be altered or amended in the same manner and subject to the same conditions as apply with respect to amendment of the Articles of Incorporation of the Association.

The Board shall be responsible for the maintenance, control, operation and management of the Condominium Project in accordance with the provisions of the Act, the Declaration, these Bylaws and such rules and regulations as the Association may adopt from time to time as herein provided, and all agreements, and determinations lawfully made, and entered into by the Association.

## IX. NOTICE

1. Manner of Notice. All notices, demands, bills, statements or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (a) if to an Owner, at the address of his or her Unit and at such other address as the Owner may have designated by notice in writing to the Secretary, or (b) if to the Board, at the residence of the President or Secretary of the Association, or (c) if to the Managing Agent, at the principal office of the Managing Agent, or (d) at such other address as shall be designated and delivered by notice in writing in accordance herewith:

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

## X. COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Compliance. These Bylaws are set forth in compliance with the requirements of the Act.

2. Conflict. These Bylaws are subordinate and subject to all provisions of the Declaration and to the provisions of the Act. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these Bylaws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between the Declaration and the Act, the provisions of the Act shall control.

3. Severability. These Bylaws are set forth to comply with the requirements of the laws of the State of Utah. In case any of the Bylaws are in conflict with the provisions of any statute, the provisions of the statute, regulation, or rule will apply. If any provisions of these Bylaws or any section, sentence, clause phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

4. Waiver. No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

5. Captions. The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

6. Miscellaneous. Whenever in these Bylaws the context so requires, the singular number shall include the plural and converse; and the use of any gender shall be deemed to include all genders.

Adopted and executed by Declarant the 19 day of January, 2007.

Westgate Lofts Condominium Association, a Utah non-profit corporation

RICHARD F. GORDON  
By: Richard F. Gordon  
Title: President and Chair of the Board

RYAN T. BARKER  
By: Ryan T. Barker  
Title: Vice President and Member of Board

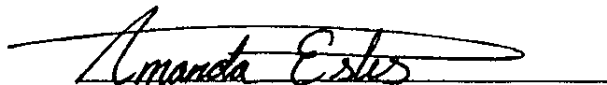
CAROLE A. STREET  
By: Carole A. Street  
Title: Secretary and Member of the Board

STATE OF UTAH )

) ss:

SALT LAKE COUNTY )

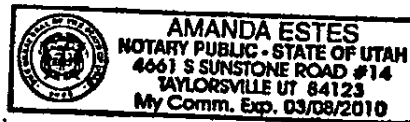
On the 19<sup>th</sup> day of January, 2008, personally appeared before me Richard Gordon, Ryan Barker and Carole A. Street, who by me being duly sworn, did say that they are respectively, the Board Chair and President, Board Member and Vice President, and Secretary of Westgate Lofts Condominium Association respectively, a Utah non-profit corporation, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its Members, and said Richard Gordon, Ryan Barker and Carole A. Street duly acknowledged to me that said Company executed the same.



NOTARY PUBLIC

Residing At:

Commission Expires:



**EXHIBIT D**

**LEGAL DESCRIPTION OF CONVERTIBLE LAND**

Beginning at a point South 89°58'33" West 165.08 feet from the Southeast corner of Block 66, Plat "A," Salt Lake Survey, said point being South 89°58'30" West 62.94 feet and North 00°01'30" West 64.43 feet and South 89°58'33" West 165.08 feet from the monument located at the Intersection of Second South Street and Third West Street,

thence South 89°58'33" West 218.32 feet;  
thence North 00°01'33" West 200.04 feet;  
thence North 89°58'27"; East 218.22 feet;  
thence South 00°03'22" East 200.05 feet to the point of beginning.

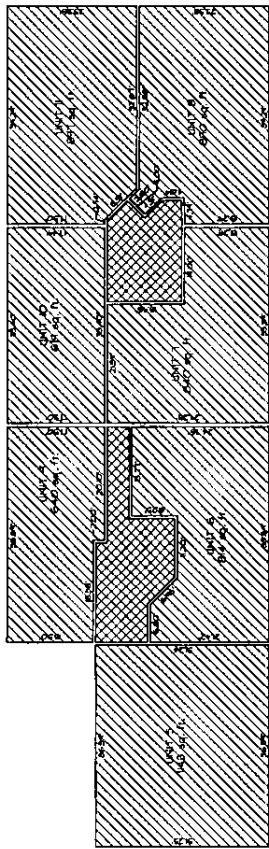
Less and excepting Existing Buildings 320, 328 and 342 as identified on page 1 of the Westgate Lofts Condominiums Plat recorded in the records of the Salt Lake County Recorder's Office recorded on January 19, 2007 as Entry No. 9977687, Book No. 9410, Page No. 9843A-D.



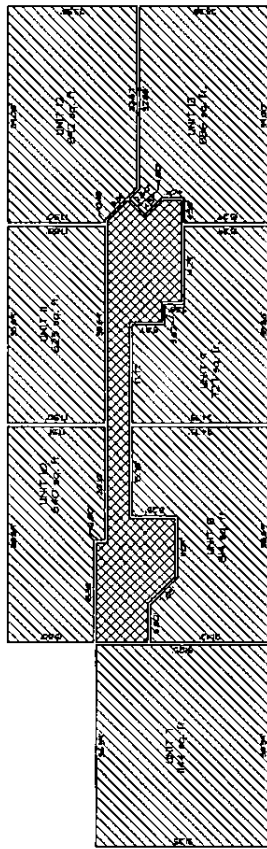
**EXHIBIT E**

CONDOMINIUM PLAT

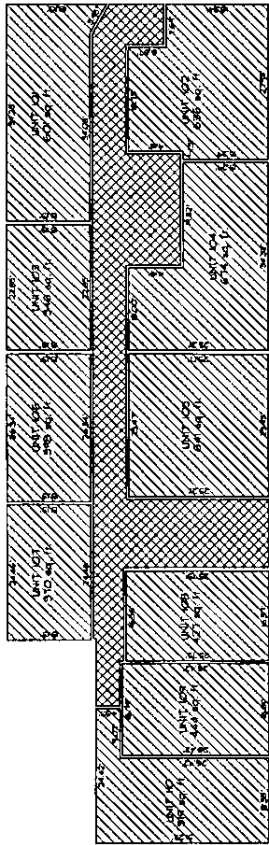




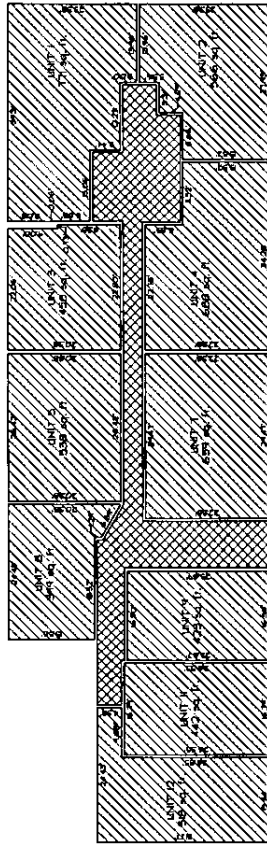
SECOND FLOOR UPPER LEVEL



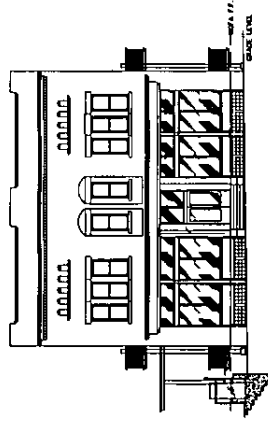
SECOND FLOOR MAIN LEVEL



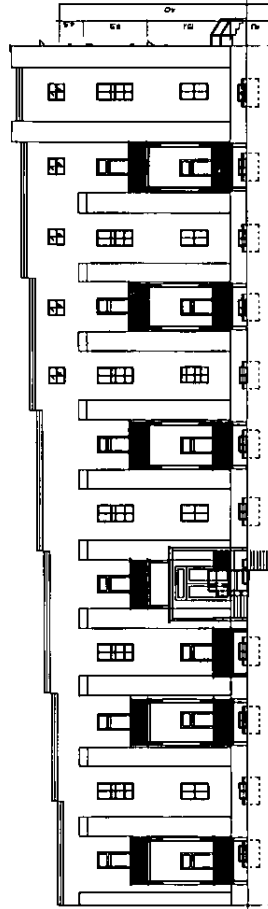
FIRST FLOOR MAIN LEVEL



FIRST FLOOR LOWER LEVEL



SOUTH ELEVATION



WEST ELEVATION



NUMBER \_\_\_\_\_  
 ACCOUNT \_\_\_\_\_  
 SHEET 2  
 OF 2 SHEETS

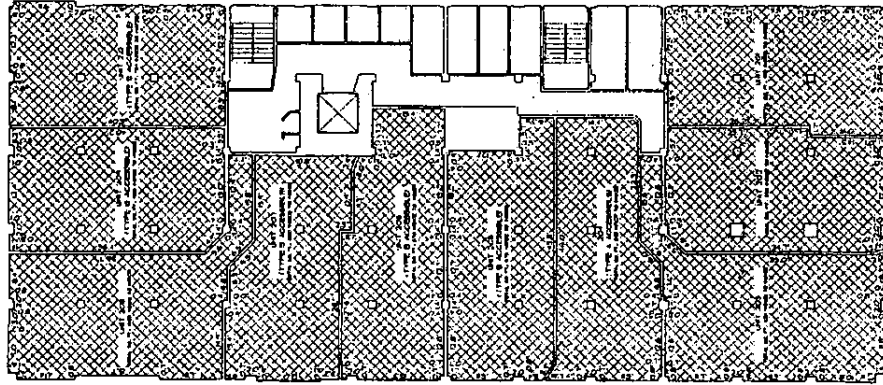
**WESTGATE LOFTS CONDOMINIUMS**  
**AMENDED PLAT**

LOCATED IN THE JURISDICTION AND AUTHORITY  
 OF THE STATE OF CALIFORNIA  
 DRAWN BY: [Name]  
 DATE: [Date]

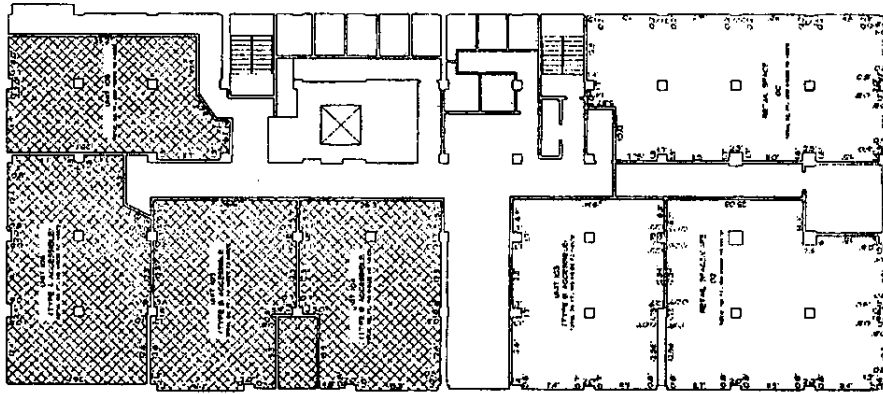
NUMBER \_\_\_\_\_  
 ACCOUNT \_\_\_\_\_  
 SHEET 2  
 OF 2 SHEETS

NOTE: THE DRAWING SHALL BE SUBJECT TO ANY  
 REVISIONS APPROVED BY THE ARCHITECT FOR  
 THE PROJECT.

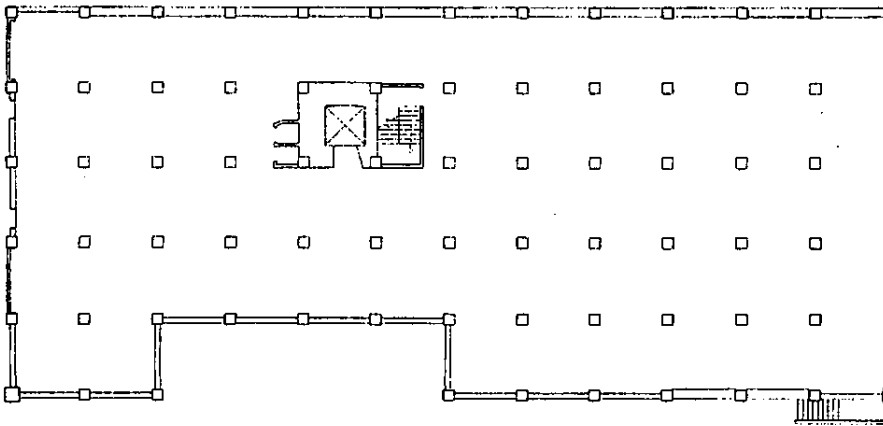




SECOND FLOOR LEVEL



FIRST FLOOR LEVEL

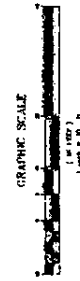


PARKING BASEMENT LEVEL

SHEET NO. \_\_\_\_\_  
 ACCOUNT NO. \_\_\_\_\_  
 SHEET 2  
 OF 4 SHEETS

**WESTGATE LOFTS CONDOMINIUMS**

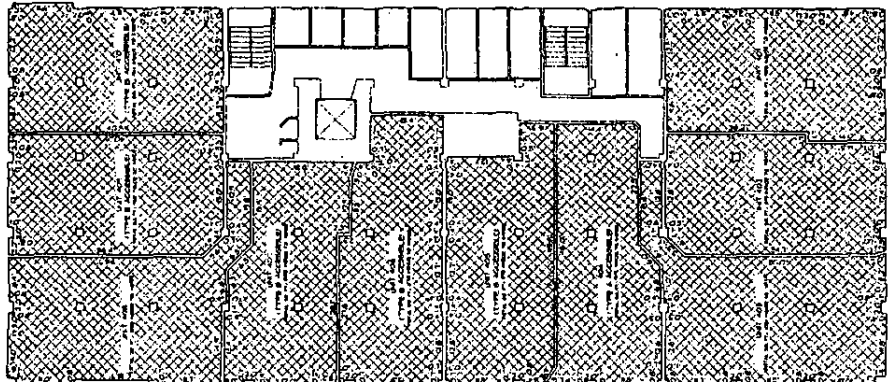
COUNTY OF SHERIDAN, DISTRICT OF SHERIDAN  
 COMMUNITY DEVELOPMENT DEPARTMENT  
 100 WEST 200 STREET



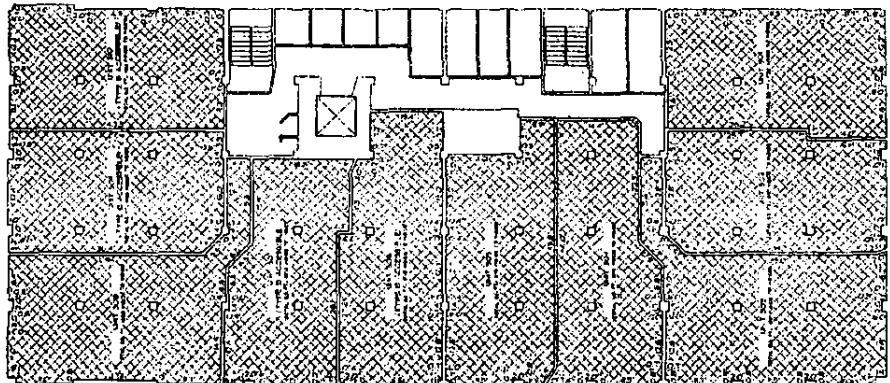
UNHATCHED AREA: OPEN AREA  
 HATCHED AREA: LIMITED COMMON AREA  
 CROSS-HATCHED AREA: PRIVATE OR RESERVE AREA

SHEET NO. \_\_\_\_\_  
 ACCOUNT NO. \_\_\_\_\_  
 SHEET 2  
 OF 4 SHEETS

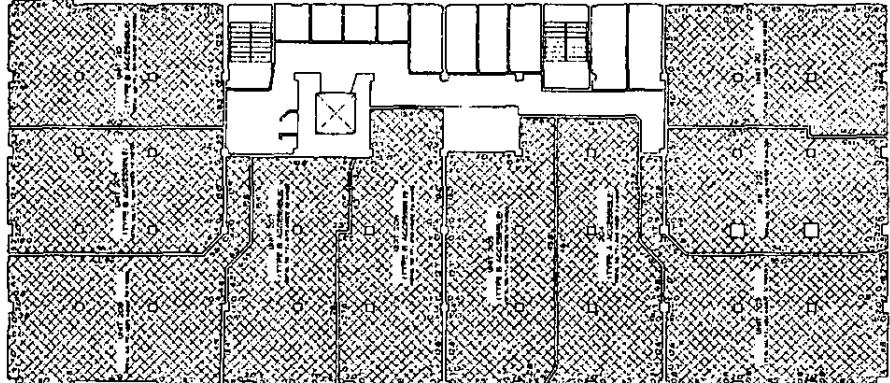
NOTE: THE SHADING PORTIONS SHOWN ON EACH SHEET WAS PROVIDED BY THE ARCHITECT FOR THE PROJECT.



FOURTH FLOOR LEVEL



THIRD FLOOR LEVEL

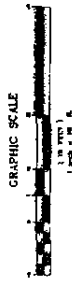


SECOND FLOOR LEVEL

DATE: \_\_\_\_\_  
 ACCOUNT: \_\_\_\_\_  
 SHEET: 3  
 OF 4 SHEETS

DATE: \_\_\_\_\_  
 ACCOUNT: \_\_\_\_\_  
 SHEET: 3  
 OF 4 SHEETS

**WESTGATE LOFTS CONDOMINIUMS**  
 QUANTITIES OF MATERIALS, DIMENSIONS, FINISHES,  
 AND OTHER INFORMATION FOR THE ARCHITECTURE

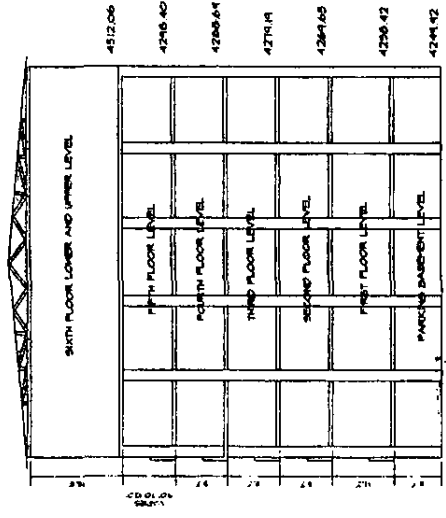


PRIVATE OVERSEAS AREA

LIMITED COMMON AREA

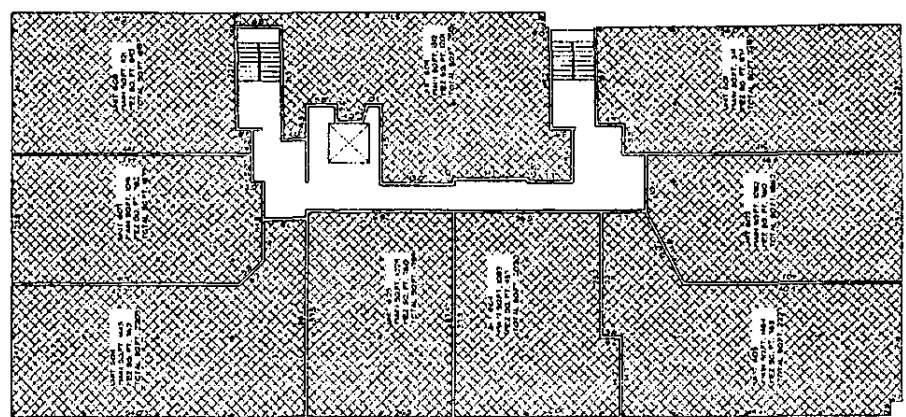
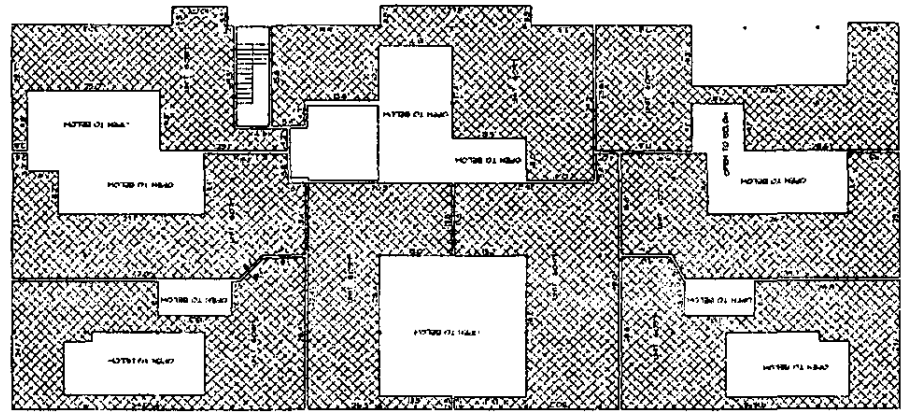
COPYING AREA

NOTE: THE QUANTITIES AND DIMENSIONS SHOWN ON THIS SHEET HAVE BEEN PROVIDED BY THE ARCHITECTURE FOR THE PROJECT.



VERSION \_\_\_\_\_  
ACCOUNT \_\_\_\_\_  
SHEET 4  
OF 4 SHEETS

**WESTGATE LOFTS CONDOMINIUMS**  
 LOCATED AT THE INTERSECTION OF WESTGATE AVENUE AND WESTGATE STREET  
 PROJECT NO. 200-1000-1000  
 SHEET NO. 200-1000-1000



LEGEND:  
 [Hatched Box] LIMITED COMMON AREA  
 [Dotted Box] COMMON AREA  
 [Solid Box] PRIVATE COMMON AREA

NOTE: THE SQUARE FOOTAGE SHOWN ON THIS SHEET WAS DETERMINED BY THE ARCHITECT FOR THE PROJECT.

VERSION \_\_\_\_\_  
ACCOUNT \_\_\_\_\_  
SHEET 4  
OF 4 SHEETS

**EXHIBIT F**

**CURRENT STATEMENT OF ALLOCATED INTERESTS**



**EXHIBIT G**

**LEGAL DESCRIPTION OF TEMPORARY PARKING PARCEL**

Beginning at a point South 89°58'30" West 62.94 feet and North 00°01'30" West 64.43 feet and South 89°58'33" West 383.40 feet from the monument located at the intersection of Second South Street and Third West Street,

thence South 89°58'33" West 176.93 feet;  
thence North 00°03'31" West 178.40 feet;  
thence North 89°58'27" East 165.14 feet;  
thence North 00°03'25" West 21.64 feet;  
thence North 89°58'27" East 11.90 feet;  
thence South 00°01'33" East 200.04 feet to the point of beginning.

Contains 31,830 sq. ft. or 0.73 acres

**EXHIBIT H**  
**FORM OF SETTLEMENT AGREEMENT BETWEEN BOARD AND DECLARANT**  
**WESTGATE LOFTS**

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter "Agreement") is entered into effective this \_\_\_\_ day of \_\_\_\_\_, 200\_ by and between the Westgate Lofts Condominium Association (the "HOA") on the one hand, and Westgate Lofts, Inc., a Utah corporation (hereinafter "Declarant"), on the other hand.

### RECITALS

A. Declarant is the owner of that certain property located at \_\_\_\_\_ (the "Property"). Declarant has paid for the construction of condominium units ("Units") at the Property (the "Condominium Project").

B. The HOA is a non-profit corporation in which the owners of Units are members.

C. Declarant has completed construction of the Condominium Project and Units to the satisfaction of the HOA and in satisfaction of the punch list dated \_\_\_\_\_ (the "Punch List") and the HOA has agreed to release any claims it might have against Declarant arising out of the construction of the Premises as more specifically set forth below.

### AGREEMENT

**NOW THEREFORE**, in consideration of the mutual covenants and conditions set forth below, and intending to be legally bound thereby, Declarant and the HOA covenant and agree as follows:

1. Release of Declarant. The HOA on its own behalf and on behalf of all owners, renters, lessees or others occupying condominium units located at the Condominium Project hereby forever release, discharge, acquit, terminate, waive and surrender any and all rights, titles, actions, claims, damages and interests that it might have against Declarant and/or Declarant's owners, directors, officers, employees, agents, attorneys, representatives, contractors and affiliates (collectively, "Declarant's Affiliates") with respect to (i) the items listed on the Punch List, (ii) actions and omissions taken or not taken by Declarant and/or Declarant's Affiliates with regard to the construction, design, development, management, supervision, operation and control of the Condominium Project and (iii) other rights, claims, damages, remedies, actions and interests, known and unknown, present and future, that it may possess with respect to the Condominium Project (excluding any obligations of Declarant with respect to its ongoing ownership of Units, if any, which obligations are similar to the obligations of the other Owners).

2. Non-Disparagement. The HOA agrees that its officers shall not make any disparaging, derogatory and/or defamatory statements, remarks or comments regarding Declarant, its officers, agents, products, and/or services either expressly or by implication. The HOA further agree that its officers shall not make any statement or criticism, nor take any action which is adverse to the interests of or that would cause Declarant, its parent, affiliates, subsidiaries, divisions, or its current and former directors, agents, shareholders, or executives

embarrassment or humiliation or otherwise cause or contribute to such entity or person being held in disrepute by the public or Declarant's clients or customers. This provision prohibits the making of any disparaging statements, remarks and/or comments regardless of the truthfulness of the statement.

3. No Transfer of Rights. The HOA warrants that it has not assigned or transferred any right or claim described in the general release of Declarant given above.

4. No Reliance on Extraneous Information. The HOA acknowledges that, in signing this general release, it is not relying on any information provided to it by Declarant or its agents, nor are relying upon Declarant to provide any information.

5. Advice of Counsel. The HOA acknowledges that it has been, and hereby is, advised to seek legal counsel and to review this document with legal counsel of its choice and that no rule of construction construing contract provisions against the drafter of an agreement shall be employed in construing or interpreting the provisions of this Agreement.

6. Governing Law. This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the State of Utah, and, subject to any applicable agreement regarding arbitration, no action involving this Agreement may be brought except in the State of Utah or in the United States District Court for the District of Utah.

7. Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties and supersedes any and all understandings and agreements made prior hereto, if any. There are no collateral understandings, representations or agreements other than those contained herein.

8. Modification. No provision of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the parties hereto.

9. No Admission of Liability. It is understood and agreed that the execution of this Agreement by the parties shall not to be construed as an admission of any liability on their part to other than to comply with the terms of this Agreement.

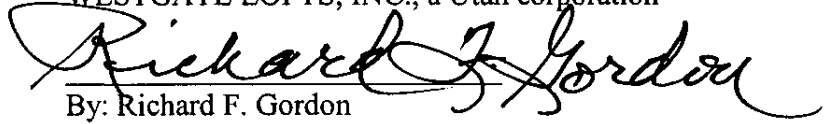
10. Voluntary Execution. The HOA represents and warrants that it has signed this Agreement voluntarily and of its own free will and that it has not been subjected to duress or undue influence from any source in executing it.

11. Severability. In the event that any provision herein is declared unenforceable by a court of competent jurisdiction or other decision maker, the remaining provisions shall remain in full force and effect.

12. Authority. The individuals signing below represent and warrant that all required consents, authorizations or other requirements for execution of this Agreement have been met with regard to the party on whose behalf they are executing this Agreement and that they have all requisite authority to execute this Agreement on behalf of such party.

EXECUTED effective as of the date noted above.

WESTGATE LOFTS, INC., a Utah corporation



By: Richard F. Gordon

Its: President

WESTGATE LOFTS CONDOMINIUM ASSOCIATION,  
a Utah non-profit corporation



By: RICHARD F. GORDON

Its: DIRECTOR

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_